Saskatchewan
Agriculture
and Food

Law and the

Saskatchewan Farmer

Foreword

Law for Saskatchewan Farm Families provides a general overview of the law as it affects farmers. It is intended to provide a summary, in layman's language, of the law. It cannot be used as a replacement for legal advice. A lawyer should be consulted when dealing with legal problems.

Other publications available from Saskatchewan Agriculture and Food that relate to law are as follows:

- Estate Planning for Farm Families
- Income Tax Management for Farmers
- Farm Incorporation
- Land Rental Arrangements
- Crop Share Lease Agreement
- Cash Lease Agreement (Crops)
- Flexible Cash Lease Agreement (Crops)
- Farm Credit Management

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I. Introduction

Farming is a way of life and a business. The business of farming has become more complex in recent years. Contracts are negotiated; land, buildings and machinery are purchased and credit is obtained.

Farm families have expanded their business and personal activities off the farm and must therefore keep informed about changes in consumer law, family law and rules related to the drawing of wills.

Today it is essential that farm families understand certain legal concepts in order to handle daily decision making and effectively plan for the future.

This publication is intended as a general guide for farmers and is not a substitute for a qualified legal opinion. Nor should it be considered a statement of the law. Rather, its purpose is to set out the most frequently encountered legal problems faced by farm families and explain the law as it applies generally to those problems. This publication will assist farm families in recognizing and analyzing legal problems and also aid in helping to understand the solutions.

II. The Sources of Law

In Saskatchewan, the two sources of law are the common law and statute law. The common law is based on the custom of following actual cases which courts have already decided. This is sometimes referred to as "following precedent". Since no two cases are ever identical, a case can be distinguished from earlier cases by dwelling on differences in the facts. The common law can therefore be adapted to changing social conditions.

The second main source of law is statute law. This consists of Acts of Canada's Parliament and the provincial Legislatures. A statute overrules all the common law which deals with a particular point. Many statutes are a codification of existing common law (such as The Sale of Goods Act and Partnership Act). If a statute covers a given fact situation, it will be applied rather than the common law.

Our law is split into three major divisions: Criminal law, Civil law, and Administrative law.

Criminal Law

Criminal law concerns those activities which are classified as illegal. Most of our Criminal law has been codified in the Criminal Code, which is an Act of Parliament. Some "quasi-criminal" legislation (such as penalty sections of the Wildlife Act) has been enacted by the provincial government. Criminal law is therefore statute law, although many court cases have interpreted and enlarged or altered the application of a number of Criminal Code sections.

It is the Crown, in the name of Her Majesty the Queen, which commences a prosecution against an accused person. A private individual can swear a complaint (or Information) which will also institute a criminal prosecution.

Civil Law

Civil law in Saskatchewan is based on statute law and case law. It is the branch of law concerned with private rights and obligations between individuals and usually involves a claim for money. The law relating to contracts and torts, that is, private or civil wrongs (for example negligence, nuisance or trespass) falls within the civil law.

Many incidents give rise to both civil and criminal consequences. For example, if a victim suffers bodily injury due to an assault, his attacker can face a criminal prosecution for assault, as well as a civil action for damages for the bodily harm done to the victim.

Administrative Law

Administrative law is relatively new, but it is an increasingly important area of law. It covers the relations created between individual citizens and administrative tribunals or agencies. The theory behind the formation of administrative agencies is that an administrative board is often better equipped than a court to handle certain problems because of the particular expertise and background experience of the board members. An administrative agency will often have the power to create new law which requires the approval of Cabinet to be effective. Examples of administrative agencies which directly affect farmers are the Milk Control Board and The Surface Rights Arbitration Board.

III. An Overview of Saskatchewan Courts

In a civil dispute, the monetary amount of the damages being sued for will usually determine which court can hear the case. In

Saskatchewan at present, if the amount claimed is less than $5,000.00 the action may be commenced under **The Small Claims Enforcement Act**. This would be the cheapest and least complicated way to have the matter settled. It is not necessary to be represented by a lawyer and the procedure followed at trial is very informal. The plaintiff (person bringing the action) may get assistance from a Provincial Court Judge in drafting a Statement of Claim and the manner in which it must be served. Farmers who have claims for less than $5,000.00 (for example, for seed grain which was sold and not paid for) may contact the nearest Courthouse for information on how to commence the action in Small Claims Court.

If the claim is greater than $5,000.00 the case must be heard in the Court of Queen's Bench. Other types of actions which must be brought in the Court of Queen's Bench include actions in which title to land is brought into question; actions to determine the validity of a bequest in a will, and actions for libel and slander.

As the procedure in the Court of Queen's Bench is quite complicated, you are recommended to consult a lawyer to determine if the claim is worth pursuing.

Criminal cases are heard in either the Provincial Court or the Court of Queen's Bench, depending on the nature of the charge and the method of trial that the accused elects. Some charges (eg. murder) must be heard before a Queen's Bench judge and jury.

The Legal Profession

The legal profession is a self-regulating body which is governed by the Law Society. Lawyers in Saskatchewan can now advertise their preferred areas of practice. The fees charged will usually depend on the amount of time spent on the client's case and the expertise and experience of the lawyer. It is a good idea to have the fee structure set out at the first interview and you should not hesitate to ask a lawyer how you will be charged. If you feel you have been overcharged, you can apply within 30 days to the Registrar's Office at the Courthouse nearest the lawyer's office to have the Statement of Account reviewed (referred to as "Taxation" of the Statement of Account). If you have other complaints about a lawyer you can write to the Secretary of the Law Society, 201 - 2212 Scarth Street, Regina (phone 569-8242) setting out your complaint. The Law Society will then investigate the alleged misconduct.

Legal Aid

Legal Aid Clinics have been established in most major centres in Saskatchewan. The clinics provide legal services for people who cannot afford to pay for them. Eligibility for Legal Aid depends on how much money the applicant earned during the year and how many

dependents the applicant has. A low income earner should contact the nearest Legal Aid Clinic to determine his eligibility.

Self-Help

You should solve your own legal problems if possible. However, you should be cautious about letting people who are not lawyers draw up transfers, wills or other types of documents, as the legislation and decided court cases which applies to them is often not understood by the layman. A good rule of thumb might be that if the problem is serious from either a financial or personal viewpoint, a lawyer should be consulted.

IV. Private or Civil Wrongs or Injuries

A "tort" is a civil wrong (other than a breach of contract or trust) for which the victim can ask the court to award damages. A "plaintiff" (person claiming a loss) commences an action against the "defendant" (the alleged wrongdoer). At the trial, the court will decide if there has been any wrongdoing and who should bear the responsibility for the loss. There are many situations to which the law of torts applies.

Trespassing

One type of tort for which a court will award compensation is trespassing. The right to enjoy your land without interference from others remains one of the most safeguarded legal rights in society. Anyone trespassing on your land can be ordered to compensate you for any damage he causes. This would mean, for example, that someone throwing rubbish onto your property would be liable for any damage it had caused and would have to pay for its removal. Even if no damage is done, a trespasser may still be liable to pay a nominal amount just because of the wrongful entry.

If a trespasser does not leave upon request, only "reasonable" force may be used to eject him. An occupier can take any justifiable action which would prevent crime, protect property or those under his care. The type of force used must not include wounding or other physical injury unless it is in self-defence. You cannot set "hidden traps" for trespassers, but you can use force to expel burglars.

You can also bring an action against someone trespassing against your goods. However, case law in this area indicates that the trespasser must cause damage before he can be successfully sued. Therefore, someone accidentally hitting your hay wagon with his tractor could not be sued unless he struck it with such force that it was actually damaged.

Occupier's Liability

It is also important to realize that if you occupy farmland or other real property, either as owner or lessee, you have certain responsibilities toward third parties entering onto your land. The degree of duty owed will depend on whether the entrant is classified as a contractual entrant, invitee, licensee or trespasser.

i) Contractual Entrant

The highest duty of care is owed someone who comes onto your property as a result of a contract between himself and you(for example, a custom combiner). If a person is admitted and paid for services to be performed on your property, you must ensure that your premises are as safe as reasonable care and skill on the part of anyone would make them. The occupier's responsibility is to inspect the property and warn contractual entrants of all dangers. For more specific information concerning the duty owed employees, please refer to the Labour Law Section of this publication.

ii) Invitees

The next highest duty of care is owed to "invitees", who are people who have a common business interest with the occupier. An Agricultural Representative visiting a farmer within the scope of his employment would be classified as an invitee. You must use reasonable care to prevent harm or damage to an invitee from an unusual danger which you know, or ought to know, exists on your land. You must therefore inspect your property and eliminate any dangers that a reasonable inspection would disclose. As an example, an occupier would have a duty to warn an Agriculture Representative of the possible collapse of a stairway to a hayloft if a reasonably prudent occupier should have known it was about to collapse.

iii) Licensees

A licensee is someone who enters onto your property with your consent but with whom you have no common business interest. For example, a friend you have invited for dinner is a licensee. The only duty owed a licensee is to warn him of concealed dangers or traps which you know exist on your property. You have no duty to inspect your property for such dangers. For example, you would have to warn him about a vicious bull if you knew he was going to be in the pasture where the bull was fenced.

iv) Trespassers

A trespasser is a person who enters onto land without the permission of the occupier. A person can be a trespasser without knowing it.

For example, you may believe you are on a public road, but actually be on a private road. You would be a trespasser in this situation.

In Canada, the Supreme Court has indicated that occupiers have a "duty of common humanity" toward trespassers. Depending on the circumstances, you might have a duty to warn of unusual dangers on your property (for example, excavations), if you are aware that people often enter your land. You have a greater responsibility toward children and, if you know that they often play on your property, you would likely have a duty to place a fence around the excavation.

Snowmobilers

In Saskatchewan, **The Snowmobile Act** provides that trespassers and licensees travel on private land at their own risk. If the snowmobiler is a contractual entrant (for example, an employee) or invitee (for example, a veterinarian), you must use reasonable care to prevent harm or damage to the person from any unusual danger which you know, or ought to know, exists on your land. No matter how the entrant is classified, you cannot wilfully create a danger to snowmobilers (such as stringing barbed wire across paths).

The Snowmobile Act prohibits persons from driving their snowmobiles on private property if the property is properly posted with signs which indicate that snowmobiling is prohibited. An individual who snowmobiles on posted land can be charged with an offence.

Hunters

If you post the boundaries of your land with signs bearing the words "No Trespassing", "No Hunting", "No Shooting", or words to a similar effect, no one can hunt on your property without your consent. If someone is hunting on your property, contact the R.C.M.P. and the hunter can be charged. If you do not post your land, hunters must still get your permission before entering onto your property or you can use no more force than is necessary to remove them. If a hunter resists your efforts to remove him, contact the R.C.M.P. who may lay charges. You can also bring a civil action for trespass against the hunter.

If a hunter kills or wounds one of your animals, contact the R.C.M.P. immediately. A provincial government fund has been set up under which you will receive compensation if it can be established that the cause of death was due to a hunter's bullet.

Animals

The Stray Animals Act provides that you may restrain any animal which is unlawfully running at large or has broken into premises enclosed by a lawful fence. If you know the owner, notify him of the stray. You are entitled to claim a fee for discovering the animal and be compensated for any damage the animal may have caused. You and the owner should agree on the amount. If it is not paid within 24 hours of notification, you should notify the Secretary of the Municipality and deliver the stray to the owner or the Municipal Pound. If the owner does not claim the stray within 14 days, the Secretary of the Municipality can deliver it to a livestock auction mart and the finder will be reimbursed out of the proceeds of sale for any expenses and damages.

If you do not know who owns a stray animal, notify the R.C.M.P.

Nuisance

In the law of torts, "nuisance" generally means the use of land in such a way that it interferes with the use and enjoyment of adjoining land through such things as noise, smoke or smell. In an action for nuisance, a court must decide whether the landowner's use of his land was "reasonable". Usually a court will balance the interests of the landowners involved.

Nuisances can arise in many ways. In Ontario, for example, a tobacco factory emitted nauseating fumes which disturbed an adjacent landowner. He was awarded damages for this. However, if the nuisance has been authorized by statute - for example, noise and fumes from a railway set up under The Railway Act there is no claim for damages.

Negligence

Many of the "wrongs" in society are caused through carelessness. Negligence is the branch of tort law which defines the careless acts for which a person will be held responsible. In order to collect damages, a claimant must be able to establish that the wrongdoer had a responsibility to prevent the "wrong" from occurring and that he should have foreseen that his action would cause damages or injury.

The most common claim in negligence is for the negligent operation of a motor vehicle. The Vehicles Act sets out the rules governing the operation of motor vehicles including speed limits and rules of the road. Generally speaking, a violation of the Act will constitute negligence, but sometimes even being technically within the law will constitute negligence. For example, the speed limit in a city may be

50 kilometres per hour, but if the roads are extremely icy, it may be negligent to drive at 25 kilometres per hour.

You can be liable for negligence if you do not take proper precautions to safeguard farm operations. For example, if your neighbour's children are always in your yard and one child loses his eyesight after splashing chemicals from an open can into his face, you may be liable for the injury. A court would likely decide that you should have foreseen the possible hazard and safeguarded against it.

Courts may also hold the victim partly responsible for his injury or loss and divide the damages on a percentage basis between the claimant and the defendant. **The Contributory Negligence Act** provides that in the situation where a court can hold two or more people responsible for an injury, each can be required to pay a portion of the total assessed damages. This would happen in a situation where a car accident occurs as a result of Driver A driving too fast and Driver B pulling away from the curb without looking. A court might hold A 80 percent and B 20 percent responsible. B would then be able to recover 80 percent of his damages from A and A would recover 20 percent of his damages from B. Similarly, if you fail to wear your seatbelt and are involved in a car accident, you can be held to be partially responsible for your injuries.

V. Consumer Protection

One problem often encountered by consumers is poor quality merchandise and services. The wise consumer should arm himself with as much knowledge as possible about a product and seller before binding himself under a consumer sales contract. The Saskatchewan Department of Consumer and Commercial affairs (Phone 787-5550 in Regina, and 933-5725 in Saskatoon) can provide information about products (for example, whether a particular year and model of hair dryer contains asbestos). In addition, the magazine "Canadian Consumer" provides the results of product tests carried out by the Consumers' Association of Canada and is available through most local libraries.

Consumer Products Warranties Act

You should realize that a contract is generally created when two people exchange, or agree to exchange, two things of value (for example, money for goods). Generally, the contract does not have to be in writing unless it involves land or is for a sale of goods over $50.00 and part of the goods are not delivered to the purchaser at the time of sale. Therefore, even the purchase of a carton of soft drinks

at the local drug store is a contract giving rise to legal rights and obligations.

The Consumer Products Warranties Act (CPWA) deals with the problems faced by consumers of defective products. The CPWA regulates the rights of individuals who acquire "consumer products" for personal use or consumption. "Consumer products" are generally private, non-industrial goods which are used for personal, family or household purposes, as well as goods used by farmers in their operations which are not covered by **The Agricultural Implements Act**. **The Agricultural Implements Act** applies to "implements" as defined in the regulations to the Act. The regulations exclude any equipment or machine sold for less than $1,000.00 from the definition of "implement", as well as a list of machines including motor trucks, snowmobiles and snowblowers. These would now fall within the scope of the **CPWA**. It should be noted that the **CPWA** does not apply to private sales.

The **CPWA** provides that certain "Statutory Warranties" apply whenever a new or used consumer product is purchased from a Saskatchewan retailer. These warranties are deemed by the Act to be given to you by both the retail seller and manufacturer. The Statutory Warranties are:

(a) You should be able to have ownership of the goods without fear of any mortgages or other encumbrances against them.

(b) The product must match its description.

(c) If you state the purpose for which you are purchasing the goods, they must be suitable for that as well as their usual purpose.

(d) The goods must be of "acceptable quality" (defined as qualities and characteristics consumers can reasonably expect after taking into account the price and description).

(e) The goods must be "reasonably durable". (They must last for a reasonable length of time taking into account the price and description, as well as how the product has been used and maintained). This means that if, for example, you buy a soil tester and after one use it breaks due to improper welding, you can return it and get a refund or have it repaired free of charge.

(f) If the goods are sold by sample, they must match the quality of the sample and be free from defects. For example, if you receive a sample of seed grain from a commercial seller and agree to buy 50 bushels, the grain which is delivered to you must correspond with the sample or you are entitled to return it and demand your money back. The dealer can also substitute another type of seed which you find acceptable.

(g) Spare parts and repair facilities must be available for a reasonable period of time after purchasing the goods.

Any clause in a contract that attempts to exclude or limit these statutory warranties or the remedies for their breach is prohibited by the Act.

Remedies Under the CPWA

If a product has a major defect which cannot be repaired, you can reject the product and recover the purchase price from the retailer or manufacturer. You must reject the consumer product within a reasonable time. What is reasonable will depend on the type of good purchased and how long it takes to discover the defects in that particular good. For example, you would have a longer period of time to reject a car than a mousetrap. You may have to make a deduction for the time you used the product if you were able to use it for any length of time.

If the product can be repaired, you are entitled to have it repaired at no cost to you. If, after a reasonable time, the seller has not fixed the product, you can have it repaired elsewhere and recover your costs from the seller.

You can recover compensation for reasonably foreseeable losses which occur as a result of breach of a Statutory Warranty. This includes compensation for personal injury. For example, if the pull cord assembly on the starter of a snowmobile flew apart while it was being started and injured one of your eyes, you could claim for damages.

If you have a problem with a product, discuss it first with the seller and/or manufacturer. Most times they will be happy to work out an adjustment. If they do not, contact the Saskatchewan Department of Consumer and Commercial Affairs (Phone 787-5550 in Regina, and 933-5725 in Saskatoon). The Department is responsible for administering the **CPWA** and can also mediate disputes. In certain situations (such as serious cases from a financial point of view), you should consult a lawyer and get the courts to resolve the problem.

Agricultural Implements Act

This Act applies to the sale of all implements in Saskatchewan by licensed dealers. Private sales and auction sales are exempt under the Act. "Implements" is defined in the regulations and basically includes all farm machinery with a selling price of $1,000.00 or more. Machinery worth less than $1,000.00 is excluded but falls within the provisions of the Consumer Products Warranties Act.

All sales contracts for new and used equipment must be in writing and in the form set out in the regulations. Even if the contract is not in

writing, the Act provides that the terms of the proper forms will govern the contract.

The Act provides that the purchaser of a **new** implement has a 10-day trial period. You can return the implement to the dealer and get a refund if:

(a) it does not perform the work for which it is intended;

(b) you give notice in writing to the dealer within the 10-day period, and;

(c) within seven days of the notice, the dealer does not repair the implement.

A contract for the sale of a new implement shall be deemed to contain the following warranties:

(a) That the implement is well-made and of good materials.

(b) That the implement will perform the work for which is was intended and that the stated horsepower, if applicable, can be developed under fit and suitable conditions.

(c) That the implement will perform properly for one year if used under fit and suitable conditions and is properly cared for and that defective parts will be replaced free of charge. If the implement is returned to the dealer's place of business, the dealer must install the replacement parts free of charge.

(d) That all necessary parts will be kept by the distributor for ten years and that the purchaser can obtain them within a reasonable length of time at the distributor's place of business.

If these warranties are not honoured, you may be able to collect damages from the dealer and distributor.

Under the Act, there is no warranty for used equipment. You may agree for a warranty to be written in your sales contract. Otherwise the implement is purchased on an "as is" basis.

The Act states that the dealer and distributor must also provide emergency repair parts within 72 hours (not including weekends or holidays) where an implement breaks down during its season of use. If this is not done, the dealer and/or distributor will be responsible for half the normal rental rate for a replacement implement.

Remedies Under the Agricultural Implements Act

Farmers who feel they have suffered a loss due to unreasonable delay in availability of repairs or non-fulfilment of warranties, can either bring a court action or apply to the Agricultural Implements Board, 1871 Smith Street, Regina (phone 787-5550) for an award of damages. The Board can pay compensation out of the Agricultural Implements Compensation Fund (to which all distributors must contribute). Compensation will not be awarded to the farmer unless he gives notice of the loss incurred to the distributor, dealer and the Board within six months after the damages or losses were incurred. However, the Board can waive this requirement if it feels that the claim is just and ought to be allowed. The application acts as a bar to court action and the Board's decision is final. The Board's award cannot exceed $5,000.00

Paying Dealers for Implements

If you purchase an implement from a dealer and the dealer arranges for the financing of the purchase price through what is commonly called the "instalment plan", you can make the payments to the dealer unless you are given notice by registered mail that the payments are to be made to some other person. If you have not received such a notice, you can continue to make the payments directly to the dealer and each payment must be credited to you.

Buying Second-hand Articles

Purchasers of second-hand equipment in private sales should always conduct a search at the Personal Property Registry, 3rd Floor, 1874 Scarth Street, Regina (phone 787-5512) to determine if the equipment has been granted as security in a previous agreement. The article should only be purchased if any existing registration is discharged.

If you buy an article against which a security interest is properly registered, you are liable to have the article seized from you in the event that the person selling to you does not meet his obligations to the original vendor or lender. If this happens, your only recourse is to pay the debt owed the original vendor or lender or to sue the person who sold you the article for breach of warranty of title (failing to give good title). However, if the person who sold you the article has defaulted under the original security agreement, your chances of collecting a Judgment awarded against him would likely be small.

It should be noted that if you purchase a second-hand article (other than a motor vehicle) for less than $500.00, which is for personal, family or farming use, the original seller or lender cannot claim the article from you if the person selling to you defaults in his payments to the original seller or lender. In this case, the original seller or

lender could not protect his interest through registration. It would therefore be unnecessary to conduct a search at the Personal Property Registry if you were purchasing a second-hand article which falls in this category.

Door to Door Selling

In general, no person can sell from door to door unless he is licensed under **The Direct Sellers Act**. There are certain exceptions (such as someone selling feed grain, fertilizer or weed spray). Ask every door-to-door salesman for his licence, as any contract of sale cannot be enforced by the company unless the salesman is licensed. If the salesperson is not required to carry a licence, he should be able to explain why it is not required.

There is a four day "cooling off period" when you buy goods or services from a door-to-door salesman. If you decide to return the goods or cancel the services and give written notice of your intention to do so within ten days after the date of the sale, you are entitled to receive the purchase price back. In most situations you are also entitled to a total refund if the goods or services are not supplied within 120 days of the entering into of the contract. However, if the reason the product was not supplied was for reasons beyond the company's control (for example, weather), you would not be entitled to a refund. If you have purchased goods over the telephone from a salesman located outside Saskatchewan, you can cancel the contract by serving written notice on the salesman by registered mail or telegram to his last known address. However, if you have already authorized payment by way of your credit card, you may have a difficult time getting your money back.

Unsolicited Goods and Credit Cards

If you receive goods or credit cards which you have not requested, and you know were not intended for someone else, you have no obligation to return them to the sender unless the company requests that they be returned. You may also face legal liability if the goods are wilfully damaged.

If you receive an unsolicited credit card, you are not responsible for any transaction made with the credit card until you indicate your intention to accept the credit card in writing to the sender. However, use of the card indicates that you intend to accept it. You will then be liable to pay for any merchandise obtained through use of the card. A credit card replacing another credit card is not an unsolicited credit card.

Credit Reporting Agencies

Any agency which gives information to subscribers concerning the financial rating of any person is subject to **The Credit Reporting Agencies Act**. This Act provides that the agencies can only give credit reports to government agencies, to lenders who have received an application for credit, insurance companies, employers or persons who have legitimate business reasons for requiring the information.

You have a right to require the agency to tell you the names of the persons furnished with a credit report, and to disclose all information it has gathered concerning you, but the credit reporting agency is not required to disclose the sources of investigative information. If you disagree with any information in your file, you can request in writing that the information be investigated. The agency must report to you about the outcome of the investigations and remove all inaccurate information from your record.

VI. Contracts

Farmers enter into contracts almost daily whether buying a shirt, ordering a meal, or buying land. A contract is an agreement enforceable at law. To be enforceable, the parties must intend to create legal relations, there must be valid offer and acceptance, consideration (or value) must be given (or the contract must be "under seal"), and the parties must have the legal capacity to make a contract.

Intention to Create Legal Relations

Both parties must intend to create a legally enforceable agreement before the contract can be enforced at law. For example, you likely could not successfully sue your mother if she stated she would give you her china set if you would cut your hair and then failed to do so.

Courts usually presume that strangers and business people intend to create legal relations when they bargain, but would examine domestic arrangements between spouses and family members more carefully.

Offer and Acceptance

An offer does not have to be in writing, but it must be definite and for specific property or goods. For example, "I will buy your 1968 John Deere 4020 tractor" is an offer, whereas "I will buy your tractor" would likely not be an offer unless you were standing in front of a specific tractor. An offer is made when you promise to do something on the condition that another party will also perform specified acts. If

the other party accepts the exact terms of your offer and promises to carry out the conditions, the contract is formed. But if the other party presents a counter-offer, you must accept its exact terms before a contract is formed.

An offer will lapse if it is not accepted within the time specified in the offer. If no time is specified, the offer will lapse if it is not accepted within a "reasonable time". An offer will also lapse when either party dies or becomes insane prior to acceptance or if the offer is revoked by the person who made it.

Consideration

The promises exchanged in the offer and acceptance must have some value in the eyes of the law before the contract is enforceable. The "consideration" may include money, labour or a trade-in.

A court will not be concerned with whether or not the consideration is fair. If someone wants to make a bad deal, the courts will not set it aside.

If there is no consideration for the contract, the parties are not bound by its terms unless the contract is "under seal". This means that a red water seal or imprinted seal must be beside your signature when you sign the contract.

Capacity to Contract

For their own protection, the law does not allow certain persons to make binding contracts. These include:

i) Infants or Minors

In Saskatchewan, the contract of a minor (someone under 18) is unenforceable against him, but can be enforced by the minor against the other party. The exceptions are if the contract is for necessaries or for the minor's training or employment. Necessaries are not only things that a minor requires, such as food and shelter, but include those things which are necessary to his station in life.

ii) Lunatics and Intoxicated Persons

Such a person's contract can only be set aside if:

(a) at the time of making of the contract he was incapable of understanding what he was doing;

(b) at the same time the other party knew of his condition, and:

(c) the insane or intoxicated person takes action to set aside the contract within a reasonable time after becoming sane or sober.

iii) Married Women

A married woman can dispose of property, earnings and money free from her husband's control. None of her property, unless it was fraudulently transferred to her by her husband with the intention of defeating his creditors, is subject to seizure for payment of her husband's debts. However, if a wife guarantees her husband's debts, then her property is subject to seizure if a Judgment on her guarantee is obtained.

Contracts Which Must be in Writing

The following contracts must be in writing and signed by the parties to be legally enforceable:

(a) An agreement which grants an interest in land (for example, an Agreement for Sale or mortgage);

(b) Contracts for the sale of goods worth $50.00 or more where there is no delivery of any part of the goods at the time of sale;

(c) Agreements not to be completed by either party within one year (for example, if you agree to rent your combine to someone else for a three-year term);

(d) A lease of land for more than three years must be written in the form contained in **The Land Titles Act** and registered against the title to the property in order to become an encumbrance against the property.

(e) A guarantee to pay someone else's debt if the debtor defaults (for example, if you agree to guarantee your son's indebtedness to the bank).

Illegal Contracts

A contract is illegal if its object is contrary to established laws or public policy. These include:

i) Bets and Wagers

A contract of betting is null, void and unenforceable.

ii) Contracts to commit crimes or torts

These contracts are obviously unenforceable.

iii) Contracts exacting illegal rates of interest

The maximum rates of interest which may be charged by banks and money-lending companies, including finance companies, is regulated by statute law. **The Saskatchewan Cost of Credit Disclosure Act** requires that lenders provide the borrower with a loan agreement which discloses the full cost of the borrowing, both as an annual percentage rate and as a total amount in dollars and cents. If the proper disclosure statement is not provided, the borrower will not be liable to pay any interest. This provision does not apply to mortgages on real property (land, buildings and improvements).

Furthermore, the Criminal Code provides that any person that charges an interest rate exceeding 60% is guilty of either an indictable offence subject to imprisonment for up to five years or a summary offence punishable by a fine not exceeding $25,000.00 and imprisonment for up to six months.

iv) Contracts to prevent persons from marrying

These contracts are illegal as tending to injure good morals.

Grounds for Cancelling a Contract

Even where all the elements essential for the foundation of a binding contract exist, a contract can be cancelled or set aside on certain grounds. These are:

i) Mistake

A mistake about the essential term of a contract may allow it to be declared void. This would happen if, for example, a farmer contracted to sell a granary and was unaware that it had burned down. In this case, the contract would be void since the subject matter would no longer be in existence and it is an essential term of the contract. Another type of mistake is when someone signs a document believing it to be something else. However, the evidence must show that the nature of the document was not known to the person signing it and that he was not given an opportunity to read it.

ii) Misrepresentation

This occurs where one party knowingly makes a false statement and induces the other party to enter into the contract.

An example is where Farmer A represents that his tractor has only 1200 hours on it whereas it has 4500 hours. Upon learning of the truth, Farmer B could take court action to set aside the contract, or to obtain damages to compensate him for the misrepresentation of the tractor's condition.

iii) Undue Influence

Undue influence exists where one party to a contract exercises such influence over the other party that the weaker party is not exercising a free will in entering into the contract. For example, if an elderly farmer was unduly influenced to sign a contract by the son with whom he was living, the farmer's other children could sue to have the contract set aside.

iv) Duress

This is a basis for setting aside a contract where threats to injure or imprison a party to the contract (or his family) were used to force him to sign.

Limitations on Actions to Enforce Contracts

The Statute of Limitations places a time limit on the bringing of an action if the other party does not carry out his part of the agreement. For an ordinary contract this is six years from the date of breach of the contract. For example, if Farmer A sold and delivered seed wheat to Farmer B on April 1, 1985, and Farmer B failed to pay him for it, the period of limitation would begin to run on April 2, 1985. Farmer A would have until April 2, 1991, to bring an action against Farm B for payment under the contract.

A debt or claim that has been allowed to extend beyond the limitation period with no legal action being taken is said to be "outlawed". However, outlawed debts can be revived by a part payment by the person liable or his written or implied promise to pay the debt.

VII. Civil Actions Regarding Debt

Small Claims Enforcement

If you have a claim for $5,000.00 or less you could use the procedure in Small Claims Court to collect the amount owing. This would apply in situations where you sold something (for example, seed grain) to someone who neglected to pay you, or if someone damaged your property (for example, knocked down your fence).

You need not retain a lawyer to carry out the procedure. Simply take all the information concerning your claim to the Courthouse in your area and ask to see the Provincial Court Judge. The Judge will assist you in drafting the necessary documents which you can serve personally, that is, by handing them to the defendant (the person you

are making the claim against) or, if the defendant lives in Saskatchewan, by registered mail.

The trial is very informal and you should bring all witnesses and documents necessary to establish your claim. If you want to make sure a witness will be present, ask the Judge to assist you in drafting a Subpoena. A Subpoena is a document which requires a person to attend court.

A Judgment obtained in Small Claims Court can be filed and enforced as a Queen's Bench Judgment. A "Judgment" is the decision of the Court which sets out what the parties in the action must do. Once the Certificate of Judgement is filed as a Judgment of the Queen's Bench Court, it may be enforced by the garnisheeing of the defendant's wages or bank account, or by obtaining of a Writ of Execution against the defendant's goods and/or lands. The local registrar of the Queen's Bench Court can provide information on any of these processes, or you may wish to consult a lawyer.

Queen's Bench Court

If your claim exceeds the monetary limits set out in **The Small Claims Enforcement Act**, you will have to commence your action in the Court of Queen's Bench. Because the procedure in this Court is involved and complicated, it is recommended that you consult a lawyer. Your must decide if the claim is worth pursuing and should therefore find out how much it will cost you for legal fees and what likelihood you have of winning the case.

Enforcing a Judgment

Once you have obtained a Judgment and it remains unpaid, you can enforce it by issuing a Writ of Execution and/or Garnishee Summons.

i) Writ of Execution

Where a legal dispute has been decided in the courts and a sum of money is required to be paid by one person to another and such sum is not paid, payment can be enforced by a Writ of Execution. This is an order by the court directing the Sheriff to seize certain property and/or goods of the person who has been ordered to pay.

A Writ of Execution is directed to the Sheriff at the Judicial Centre where the person who has not paid the amount of the Judgment against him lives. It can be attached to all personal and real property owned by the Judgment debtor within the province. (You decide whether it will attach to personal property only or to both personal and real property. It costs more if it attaches to both.) You can then authorize the Sheriff to seize personal and real property in an amount sufficient

to satisfy the judgment. The Sheriff will require certain fees in advance before he makes the seizure.

Once the Sheriff has made a seizure, the property can be sold at a public auction. The Sheriff must comply with the procedure set out in **The Executions Act** before the property can be sold. The procedure concerning the sale of real property is quite complicated.

Once the property is sold, the proceeds are held for two months. During this time period, all persons who have Judgments against the debtor can make a claim against the proceeds by advising the Sheriff. After the two month period has expired, the proceeds are divided among those claimants who have established their judgments.

It should be noted that once a Writ of Execution is issued against a particular Judgment debtor, he cannot deal with his property except subject to the Writ. This means that if he would try to sell a car registered in his name, he could not pass free and clear title to the purchaser until he satisfied the amount of the Judgment. It is therefore wise to check the title to vehicles and other personal property before purchasing them. You can do this by conducting a search of the seller's name or the serial number of the vehicle at the Personal Property Registry, 3rd Floor, 1874 Scarth Street, Regina (phone 787-5512 or 787-5417).

ii) Property Which Cannot be Seized

The Farm Security Act provides that certain property of a farmer cannot be seized under Writs of Execution. These are:

(a) the clothing of the farm debtor and his family;

(b) furniture and appliances to a value of $10,000.00;

(c) the produce of a farmer sufficient when converted to cash to provide food and fuel for heating purposes for the debtor and his family until the next harvest;

(d) all livestock, farm machinery, dairy utensils and one automobile or truck that are necessary for the debtor's agricultural operations for the next 12 months;

(e) one motor vehicle, if it is necessary for the farmer's business, profession or trade, but only if it is not in addition to the exemption in (d);

(f) seed grain sufficient to sow all land under cultivation at the rate of two bushels per acre and 14 bushels of potatoes for planting;

(g) the crop of the debtor to such extent as is sufficient when converted into cash to pay all costs of harvesting the crop and to

provide a necessary living allowance to support the debtor and his family and to provide the necessary costs of his farming operations until the next harvest. The balance of the crop can be seized;

(h) the homestead, provided it is not more than 160 acres;

(i) the house, buildings, lot, or quarter section occupied by the debtor to the extent of $32,000.00.

(j) a house trailer occupied by the debtor provided it is not in addition to the house and buildings mentioned in (i);

(k) the books related to any profession practised by a farmer;

(l) tools, implements and office furniture to a value of $4,500.00 required in the farmer's business, trade calling or profession.

iii) Garnishment

If someone owes you money, you can claim the amount from the wages or money owed that debtor by a third party. This is called "garnisheeing" and can be done before and after obtaining judgment against the debtor unless you are garnisheeing the debtor's wages or salary. In this situation, you must have a judgment against the debtor before you can garnishee. After being served with a Garnishee Summons, the third party must pay the debt owed to the debtor or pay a portion of his wages into the Courthouse.

A certain portion of the debtor's salary is exempt from a garnishment. He is entitled to keep $500.00 per month for himself and $100.00 per month for each dependant.

If you have a Judgment you can apply to have the money paid out of court to you. If you do not have a Judgment, you must wait until the case has been heard and Judgment is awarded in your favour before you can apply to have the money paid out.

iv) The Saskatchewan Farm Security Act

In addition to the protection granted to exempt property which was set out earlier under subparagraph (ii) in this part, **The Saskatchewan Farm Security Act** also provides that a farmer may apply to a court to have chattels exempted from seizure and sale under a security agreement or writ of execution. However, this protection does not apply to situations where a Judgment has been issued regarding a chattel where the price of the chattel forms the subject matter of the Judgment on which the writ of execution is issued. Nor does this protection apply to exempt from seizure articles which are pledged as

security when a lender advances the money for the farmer to purchase them.

The Saskatchewan Farm Security Act provides additional protection against seizure on articles that are purchased by a farmer for use in farming and have a selling price greater than $500.00. If the farm article is purchased from a vendor and the vendor has a lien for all or part of the purchase price (as would be the case under an instalment plan contract), then the vendor's right to recover the unpaid purchase money is restricted to his lien on the article sole and to his right to repossession and sale. This means that if the article were seized and sold by the vendor and there were insufficient proceeds of sale to satisfy the outstanding debt, the deficiency could not be collected from the farmer.

In cases where the farmer has defaulted under an agreement whereby credit was obtained from a lender (and not a vendor) and farm articles were pledged as collateral to support the loan, the lender can only take possession of the collateral after serving proper notice on the farmer. Within 30 days of receiving the notice, the farmer may apply for a hearing by the court. The forms for making the court application are set out in the Regulations to **The Farm Security Act**. At the court hearing, the farmer can make proposals for repayment or even ask the court to order that the lender allow him the use of the farm equipment upon the payment of a specified rent. If the farmer requests mediation, the court can adjourn the application until mediation has occurred. The mediation would be carried out under the provisions of the Farm Land Security Act.

If the lender or vendor do not comply with the procedures set out in **The Farm Security Act** before taking possession of an implement, the agreement would be deemed to be cancelled, the farmer would be released from all liability with respect to the implement under the agreement and the farmer would be entitled to damages in an amount equal to one and a half times the fair market value of the implement at the time of the seizure.

If a lender has served you with a notice, you would be wise to consult a lawyer so that your rights under **The Farm Security Act** can be fully explained to you.

VIII. Financing

Farmers often purchase items on credit. Even though the farmer's good reputation and earning power are important, lenders require security (collateral) when credit is given.

Security Interests

Vendors and lenders who want to protect their interests in collateral must follow the procedure set out in The Personal Property Security Act (PPSA). The **PPSA** applies to "security interests" which includes what were previously known as conditional sale contracts and chattel mortgages. The **PPSA** sets out the procedures concerning repossession and sale upon default by the borrower are also in effect.

Some sections of the **PPSA** provide that vendors and lenders are treated differently. Vendors are sellers of goods (such as retailers and implement dealers) who sell on what is commonly called the "Instalment Plan". A lender is an individual or financial institution that lends money but does not sell goods. The finance company of farm implement companies is a lender and not a vendor.

If you buy an article and the vendor advances credit for the purchase, or a lending institution lends money to buy the article, the vendor or lender has a "purchase money security interest" in the article purchased. This type of security interest ranks higher than a general security interest over all of your assets which may have been taken by another creditor, such as a bank or credit union. In the event that you default in your debt repayment to the bank or credit union, the purchase money security interest in the item you had purchased would be a higher ranking security interest, the remaining balance owing on the purchase money security interest would be paid out first and the general security holder would get what was left over.

When you purchase items from a commercial seller, the general rule is that you do not have to conduct searches on the items being purchased. The **PPSA** provides that you will take clear title after this type of sale. You do not have this protection when you purchase goods from non-commercial sellers, so you should always conduct personal property registry searches in this situation.

Similarly, if you purchase goods for less than $500.00 and use the goods for personal, family, household or far uses, you do not have to search the title to the goods. The PPSA also provides that you will take clear title after this type of sale. Note that this does not apply to motor vehicles or fixtures, so you should always conduct searches when purchasing these types of items from non-commercial sellers.

In Saskatchewan, **The Farm Security Act** also provides that where a vendor (but not a lender) has a security interest in an article exceeding $100.00, in the event of default, the vendor's right to recover the purchase price is limited to the right to seize the article, but the vendor cannot sue for any resulting deficiency. This means that if the value of the article is less than the total debt, the vendor has no right to take any action against the debtor to recover the balance owing. This provision does not apply to a purchase money security interest

taken by a secured party other than a vendor, so that a lending institution, such as a bank or credit union, who has granted credit to enable a debtor to purchase an article could sue the debtor for the deficiency as well as repossess the article. The protection of the Limitation of Civil Rights Act can be waived by corporations. If the article sold for more than the balance of the debt owed by the purchaser, and the cost incurred by the creditor in seizing, repairing and selling the article, the surplus will be to the purchaser.

Where a lender claims an interest in an article which has been pledged as security for a loan to purchase another article, the **PPSA** establishes a scheme whereby that lender will have the first claim to the article pledged as security for the loan if he has:

(a) given value to the debtor, that is, granted the debtor a loan);
(b) signed a security agreement with the debtor; and
(c) registered a financing statement at the Personal Property Registry to protect his interest.

Generally the first creditor to establish these prerequisites has the first right to repossess the article if the debtor defaults. In this situation, as the protection of the **Limitation of Civil Rights Act** does not apply, the difference between the amount for which the article is sold and the amount owed under the security agreement as well as the costs involved in seizing, repairing and selling the article can be claimed from the debtor. If the article is sold for more than these amounts, the surplus must be turned over to the debtor.

However, **The Farm Security Act** provides that the article pledged as collateral by the debtor is an implement, then the procedure set out in **The Farm Security Act** must be followed by the creditor before the implement can be seized and told. This includes the giving of proper notice to the debtor, as well as the opportunity for mediation.

Repossession

If you are in default pursuant to the terms of a security agreement with a vendor or lender, the article you have pledged as collateral may be seized and sold providing it is not an article used in farming. Under the **PPSA**, a creditor can effect his own seizures if the debtor defaults under a security agreement. A warrant from the sheriff is not required prior to seizing the goods.

Twenty days prior to disposing of the collateral, whether by way of public or private sale, the creditor must serve notice of the sale on: (a) the debtor or any other person the secured party knows to be the owner of the collateral, (b) any creditor with a security interest in the collateral and (c) any other person with an interest in the collateral who has delivered a written statement to the creditor indicating his interest in the collateral prior to the date that the notice is served on

the debtor. The notice must contain a description of the collateral, the amount in arrears, and the amount required to satisfy the obligations created by the security agreement. If the debtor pays the amount in arrears together with the costs of seizing and repairing the collateral prior to the proposed date of the public or private sale, the debtor will be deemed to be in good standing under the security agreement. The security agreement would then be reinstated and the collateral would be returned to the debtor. However, the debtor would have to remain in good standing under the security agreement or the collateral could be seized again.

Searches

A computerized registration system has been implemented at the Personal Property Registry. Searches regarding security interests which have been registered against articles can be made by submitting the full name of the seller (individual or company name). Registrations against motor vehicles, mobile homes, trailers and airplanes can be searched by submitting the year, make, model and serial number.

The fee for a search is $10.00 for a written search and $5.00 for a verbal search. Further information regarding searches can be obtained from the Personal Property Registry, 3rd Floor, 1987 Scarth Street, Regina (phone 787-5512).

Section 178 of the Bank Act

When chartered banks grant a line of credit against which the farmer may draw as he requires the money, the farmer is often asked to give as security threshed grain, future crops, livestock and agricultural implements. This type of security is governed by the federal **Bank Act**. The object of the special powers given to the banks to lend money to farmers under Section 178 of **The Bank Act** is to enable farmers to bring their products to completion.

The security the farmer grants in this situation is that which he presently owns or of which he may become the owner. Section 178 therefore permits advances to a farmer for such things as the purchase of feed with all present and future crop as security. Consequently, this type of collateral puts the bank in a very flexible position.

If a bank takes a Section 178 security, it registers a Notice of Intention at the Bank of Canada indicating its interest in the farmer's property. Any Notice of Intention is cancelled five years from its registration unless it is shown in a statement filed by the bank that the security is still in effect. A Section 178 security cannot be registered at the provincial Personal Property Registry.

If you wish to find out whether an article has been granted as security under Section 178 of **The Bank Act**, you must submit the name and address of the person from whom you are buying the article as well as a search fee in the amount of $2.00 to the Bank of Canada, 2220-12th Avenue, Regina S4P 0M8 (phone 352-2654).

If the loan or advance is not repaid, the bank may sell any or all of the property given as security for the loan. The bank must give reasonable notice (usually 30 days) before seizing the collateral. The bank can seize the property and does not need to give notice of sale if the farmer has given written consent that the bank may sell at any time at the market price. The farmer may also agree that the bank has full ownership to the goods and authorize a private sale with the proceeds to be applied toward the debt.

Cost of Credit Disclosure Act

This legislation applies to loans (other than mortgages on real property) and vendor financed purchases. It requires lenders and sellers to set out in writing how much the "borrowing" will cost. The true interest rate must be quoted.

In the case of credit cards or other revolving credit accounts, the lender must set out the charge the borrower will be required to pay monthly or periodically on the unpaid balance. The lender must also provide a statement every three months itemizing the outstanding balance in the account at the beginning of the period, the total amount of credit extended during the period, the total sums credit to the account during the period, the costs of borrowing during the period and the outstanding balance in the account at the end of the period.

In financing situations, the lender must provide the borrower with a clear statement in writing showing the cash price of the goods or services purchased, the amount of credit advanced, the value of any trade-in and the costs of borrowing in percentage and dollar terms.

In all other situations, the lender must provide a statement indicating the entire amount of interest and services charges the borrower will have to pay in addition to repaying the borrowed amount.

If a lender fails to observe the conditions of this Act, the borrower need only repay the principal sum borrowed (that is, no interest will have to be paid).

IX. Bankruptcy

Bankruptcy proceedings allow insolvent farmers to be released from their debts so that they can make a fresh start. The federal **Bankruptcy Act** sets out the procedure to be followed in bankruptcy proceedings.

Who Qualifies

You can begin bankruptcy proceedings voluntarily if you have debts of $1,000.00 or more and cannot meet your financial obligations as they become due. You apply to the Federal Insolvency Trustee Agency, 2212 Scarth Street, Regina, S4P 2J6, Phone 780-5391. You will be asked to complete a confidential application. After that, you are interviewed by a Bankruptcy Counsellor who will advise you whether you should declare bankruptcy. If you decide that you are going to assign yourself into bankruptcy, you must retain a Trustee in Bankruptcy. Most local offices of national accounting firms have a Trustee in Bankruptcy on staff. The Trustee in Bankruptcy whom you retain will advise you of the fees procedure and length of time until the discharge will be granted.

If you are an unincorporated farmer, you must begin bankruptcy proceedings voluntarily and cannot be forced into bankruptcy by your creditors.

Procedure

If you decide to carry out bankruptcy proceedings, you must make an "authorized assignment" of all your assets to a licensed Trustee in Bankruptcy. This procedure transfers your legal interest in the property to the Trustee.

You must give the Trustee a list of your creditors and their claims. As well, you must provide a statement of all the property you presently own and all the property you have disposed of in the past five years. The Trustee then takes possession of all your assets, financial statements and documents.

The Trustee calls a meeting of your creditors which you must attend. At the meeting you must answer all questions your creditors ask. The Trustee is an independent third party who stands between you and your creditors. He has the power to carry on your farming operation, sell or mortgage the assets and negotiate with creditors to have them accept specific assets instead of payment.

The Trustee can also claim back certain property which you transferred to third parties. Any property which was transferred to a third party within a year before you declare bankruptcy can be recovered if it was transferred with the intention of avoiding the claims of other creditors. However, the Trustee must be able to establish that both you and the person to whom the property was transferred intended to defeat the claims of other creditors. If, prior to bankruptcy, you convey (transfer) property to a relative, the Trustee usually has the power to recover it as it will be presumed to be a fraudulent conveyance.

Priority of Creditors

Certain creditors will have the right to repossess property which was secured (given as collateral) for a loan. These are called "Secured Creditors" and would include implement dealers who have sold equipment to you under an "Instalment Plan", lenders to whom you had pledged certain article(s) as security for a loan and banks to whom you had granted mortgages of real property. In the event that you had defaulted on payment to the Secured Creditor and the Secured Creditor chose to proceed against you, the Secured Creditor would take the necessary legal steps to have the collateral sold, with the sale proceeds to be applied against the debt. In the event that the sale proceeds are not sufficient to pay the debt owed to the Secured Creditor, the Secured Creditor would be entitled to be ranked as a general claimant, along with the other Unsecured or General Creditors with respect to the short fall. The creditors who are paid next are called "Preferred Creditors". They include:

(a) the Trustee in Bankruptcy for all of his expenses;

(b) employees for up to three months' arrears in wages (to a maximum of $500.00);

(c) municipal taxes for two years preceding bankruptcy;

(d) arrears of rent for three months preceding bankruptcy;

(e) claims of the Crown in right of Canada or any province.

After settling the claims of the secured and preferred creditors, the Trustee pays any remaining funds to the unsecured (or general) creditors on a pro rata basis.

Guarantors of a Bankrupt's Loan

Any person who has guaranteed or co-signed a bankrupt farmer's debts would still be responsible for the payment of the debt. Your bankruptcy proceedings do not release any guarantor or co-signor from his liability to the creditor.

Assets Exempt from Seizures

The Bankruptcy Act provides that assets which are exempt from seizure pursuant to a Provincial **Exemptions Act** cannot be seized or attached under bankruptcy proceedings. In Saskatchewan, farm assets which are exempt from seizure include the home quarter; one truck; farm machinery which is necessary to carry on the farm operation for 12 months; grain, flour, vegetables and meat which are sufficient when converted into cash to provide food and fuel for heating purposes until the next harvest and seed grain to sow all land under cultivation at the rate of two bushels per acre and 14 bushels or potatoes for planting.

The Bankruptcy Act also provides that certain other assets are exempt from seizure by the Trustee such as property held in trust for someone else.

If the home quarter has been mortgaged and the payments are in arrears, the lending institution to whom the mortgage has been granted cannot obtain a final Order of Foreclosure on the mortgage for so long as the debtor or his family reside on the home quarter. **The Farm Security Act** does not protect a borrower who has purchased an item from a vendor and received credit from the vendor, or borrowed money from a lender to purchase an item and pledge the item as security for the loan. In this situation, vendors and lenders have what is defined as a "purchase money security interest" in the item and, if the purchaser (or debtor) defaults in his payments, the item can be repossessed by the vendor (or lender). However, the debtor has a right to request mediation.

Discharge From Bankruptcy

A discharge from bankruptcy is usually applied for three to twelve months after the farmer has assigned himself into bankruptcy. A discharge gives you a clear slate and cancels the unpaid portion of most remaining debts. However, a discharge will not release you from alimony payments you are required to make, maintenance payments for a spouse or child, a fine in a criminal matter, or a debt for any necessaries which were purchased.

The discharge is an official act of the Court of Queen's Bench. If the creditors object to the granting of a discharge, a Judge would review the case. The Trustee always makes a report to the Court that indicates which creditors have been paid and the bankrupt's outstanding indebtedness.

A discharge can be refused if you:

(a) neglected to keep proper books;

(b) continued to carry out business activities when you knew you were insolvent;

(c) failed to account for insufficiency of assets;

(d) caused your bankruptcy through extravagant living;

(e) are guilty of a bankruptcy offence.

Bankruptcy offenses are:

(a) failing to perform the duties of a bankrupt as set out in the Act (for example, failing to attend a meeting with creditors when required to do so by the Trustee);

(b) fraudulently disposing of property before or after bankruptcy;

(c) failing to answer questions;

(d) false accounting;

(e) obtaining credit by false representations;

(f) fraudulently removing or concealing property in the twelve months prior to bankruptcy.

Until you are discharged, you are liable to a fine or imprisonment if you recommence business or obtain credit in an amount greater than $500.00 for a purpose other than for necessaries of life and do not disclose that you are an undischarged bankrupt.

Farm Corporations

In addition to the voluntary assignment into bankruptcy which has just been outlined, a farm corporation may be "petitioned" into bankruptcy. This means that its creditors can force it into bankruptcy if it owes them a minimum of $1,000.00 and has committed an act of bankruptcy within the preceding six months. Acts of bankruptcy include attempting to conceal or remove property, fraudulently transferring assets to a third party and failing to meet liabilities generally as they become due.

If the Petition is approved by the Court of Queen's Bench, a Receding Order is issued and the bankruptcy procedure is carried out as if a voluntary assignment has been made.

Proposals

A further alternative available to "bankrupt" or "insolvent" persons is to file a proposal with a licensed Trustee. The proposal must be in

writing setting out the terms of the proposal, the rescheduling of the debts, the particulars of any securities given and must be signed by the debtor. Proposals are generally very useful where the debtor has reasonable expectation that, given time through the rescheduling of his debt, he can work his way out of an unsatisfactory financial position.

Upon receiving the proposal, it is the duty of the Trustee to investigate the affairs and property of the debtor and to report the results thereof to a meeting of the creditors. By "special resolution" (which means that a majority of the creditors in number and three-quarters in value) the creditors may accept or reject the proposal. If the proposal is approved, the debtor is given the entire administration of his property and is free to operate his business subject to the terms of the proposal. If the proposal is rejected, the debtor is deemed to have made an assignment in bankruptcy.

Orderly Payment of Debts

The Bankruptcy Act contains provisions whereby certain classes of debtors who are unable to meet their obligations can apply to pay money into court which is then distributed pro rata among creditors until they are paid in full. This is not viewed as an assignment into bankruptcy. The Provincial Mediation Board administers this program. However, debts incurred by a farmer in the ordinary course of his business usually cannot be consolidated under this procedure. Other non-qualifying debts are those relating to non-payment of taxes, mortgages, agreements for sale of land, debts owed Her Majesty the Queen in right of Canada or a province, and debts payable to a municipality or school district in Canada. Creditors can be forced to agree to the scheme of distribution if the proposal will result in their being paid in three years.

Voluntary Mediation

If you have run into financial difficulties which are not serious enough to warrant bankruptcy proceedings, you can apply to the Provincial Mediation Board, 1871 Smith Street, Regina, S4P 3V7, Phone 787-5408 for a voluntary mediation of your debts. This is a fairly flexible program which falls within provincial jurisdiction.

After receiving your application, the Board would contact your creditors and attempt to get them to agree to a voluntary arrangement whereby, for example, you would be granted an extended repayment period or your creditors would accept a percentage of the amount owed them.

The Provincial Mediation Board can also provide budget counselling and mediate between you and a specified creditor.

X. Law of Real Property

"Real property" is a term used when referring to interest in land. In law, the word "land" has a special meaning. It includes not only the surface, but everything under the surface (for example, minerals) and everything above the surface (including buildings and airspace). As an owner of real property, your ownership rights extend as far below the surface as you can drill oil wells or dig mine shafts. Your rights over air space may be limited by legislation so that, for example, aircraft may pass freely over your land.

Land Titles System

In Saskatchewan, the Certificate of Title to property indicates who owns the property, the description of the land, as well as any mortgages or other encumbrances registered against the Title. The *original Certificate of Title* is kept at the Land Titles Office in the land registration district where the land is located. The duplicate Certificate of Title is issued to the registered owner unless a mortgage is registered against the property. If a mortgage in the form set out in the Land Titles Act has been registered against property, the duplicate Certificate of Title is impounded at the Land Titles Office.

There are eight land registration districts in the province. These are at Regina, Prince Albert, Humboldt, Moose Jaw, Saskatoon, Swift Current, Battleford and Yorkton.

i) Accuracy

The Certificate of Title is guaranteed by the Provincial Government to accurately reflect the ownership of land as well as all registered encumbrances which affect the title to it. If, for some reason, an error is made and, for example, an instrument is not registered properly, damages are paid out of an assurance fund to anyone who consequently suffers a loss.

ii) Priority of Claims

The Land Titles system also provides that the first party to register his claim to property has priority over those who register later. This means, for example, that a bank with a first mortgage has a right to be paid out ahead of a bank with a second mortgage in the event that property is ordered to be sold at a judicial sale.

iii) Instruments Which Can Be Registered

These are listed in the Land Titles Act and include conveyances (transfers), mortgages, leases for greater than a 3 year term and any

other document in writing which related to or affects an interest in land (such as a caveat).

Estates in Land

The Crown is the ultimate owner of all land in Saskatchewan. If no one has a valid claim to the land (where, for example, someone dies without a will and no next of kin), the land will revert back to the Crown (as represented by the provincial government). Subject to this ultimate claim by the Crown, the type of "estate" you have in land indicates the type of interest you have. Estates are classified according to the length of time to which you are entitled to exclusive possession to that land. The three types of estates are: the fee simple estate, the life estate and the leasehold estate.

i) Fee Simple Estates

This is the greatest interest in land which can be owned. The fee simple owner holds the land for the present and future, subject only to its return to the Crown if he dies without a will disposing of it or without relatives to inherit it. The fee simple owner can divide his estate into portions at any time during his life (for example, sell the mineral estate to someone else) or by will upon his death and is entitled to be registered as the owner on a Certificate of Title.

ii) Life Estates

This estate lasts for the length of a specified person's life. It is usually for the length of the life of the person who holds the estate, but can also be for the length of someone else's life (for example, if you give land to your son for as long as Gordie Howe lives). Often a life estate is created under the terms of a will where the owner of the fee simple grants a life estate in the farm property to his wife, and then upon her death, to his children as a fee simple estate.

The life estate creates problems. It is very difficult to sell an interest in a life estate for it is impossible to tell how long the person whose life determines the length of the estate will live. Also, the holder of a life estate cannot take or destroy anything that is a permanent part of the land, including trees, without the consent of the person to whom the estate will pass after the life estate is terminated. On the other hand, the holder of the life estate is not required to make repairs so that he may let the buildings get run down and if he does make repairs, he alone is responsible for their cost.

iii) Leasehold Estates

A leasehold estate is an interest in land for a definite period of time and is created by an oral or written lease. It gives exclusive possession of the land included in the lease. Leasehold titles can be

issued where the leasehold estate is for ten years or more. In this way, mortgages and caveats can be registered directly against the title to the leasehold estate and will have priority according to the order of registration.

As a lease is an interest in land, it can affect your right to transfer your title to someone else. If you have leased your land for three years or less and the tenant occupies the land, any transfer of title will be subject to the tenant's lease (unless he gives up the lease). If the lease is for more than three years and is in writing and registered with the Land Titles Office, a transfer of title will also be subject to the tenant's lease. However, if a lease for more than three years is not registered, a transfer can take place and the tenant's rights to the land will not be protected. Therefore, if you are a tenant under a lease for more than three years, make sure that it is in writing and properly registered or you may find the land sold from under you and have no right to continue farming the property. You would, however, continue to have the right to sue the landlord for breach of lease.

If the written or verbal lease covers the lessor's homestead and the title is not in the joint names of the farmer and his spouse, the non-owning spouse must provide his or her written consent in the manner set out in The Homesteads Act or the lease is invalid.

Other Interests in Land

Other interest in land are not classified according to the length of time for which they last, but are based upon the use or benefit conferred upon the holder.

i) Easements

An easement is a right granted to an individual other than the landowner which allows the individual to have some use or control over the landowner's property. The granting of an easement is not a sale of property even though the easement is registered as an encumbrance on the title. Therefore, the granting of an easement to Sask Tel, for example, does not mean you have sold a portion of your property. Rather, you have given Sask Tel a "right of way", or right to use the property for a certain purpose. Once you have granted an easement, it encumbers your title until removed by whomever registered it.

In the event that you have been given notice that an easement is required respecting your land and you are not in agreement with the proposed location or compensation, you can contact the Public and Private Rights Board, Room 207, 3988 Albert Street, S4S 3R1, Regina (phone 787-4071). The Board's role is to mediate between the land owner and the entity requiring the easement.

ii) Oil and Gas Leases

An oil and gas lease often combines several interests in land into one agreement. Usually, these are the right of occupation of a portion of the surface area of the land (where the drilling will take place), the right to travel back and forth over the land and the right to remove the minerals covered by the lease. If the mineral owner is different from the surface owner, the mineral owner has these rights without having an oil and gas lease. If the surface owner and mineral developer (lessee or mineral owner) cannot agree on the use of the surface and compensation for geophysical or seismic operations, they can ask the Surface Rights Arbitration Board, Kindersley, phone 463-2120 or Weyburn, phone 848-2449 to arbitrate. Your surface rights cannot be interfered with unless you have consented and granted a surface lease to the mineral developer. It is the surface owner's responsibility to make sure he is receiving adequate compensation and that his interests are not affected too broadly. Since most oil companies try to get surface owners to sign "standard form leases" which have been prepared for general use, it would be a good idea to consult a lawyer to determine what the clauses mean and how your particular interests should be protected.

iii) Options

An option gives someone the first right to purchase your property at an agreed price for a specified length of time. The purchaser is not bound to purchase the property, but the vendor must sell if the purchaser exercises the option and agrees to the terms of purchase. This turns the option into a binding agreement of purchase and sale. The purchaser generally pays the vendor for the option. The vendor can usually keep this whether the purchaser buys the property or not (although this would depend on the wording of the option). If the transaction proceeds, the deposit is sometimes credited toward the purchase price. A common example is where Jones gives Brown the right to purchase his half-section for $100,000.00 within 30 days. Brown give Jones a deposit of $1,000.00. If Brown fails to exercise the option within 30 days, Jones keeps the $1,000.00 and the agreement is automatically cancelled.

If you have purchased an option, be sure to register a caveat against the title to protect your interest. If you do this, the property can only be sold subject to your rights under the option (so that any purchaser would have to sell the property to you if you exercised the option).

If the option concerns homestead property, a non-owning spouse must consent to the option or it cannot be enforced. It is therefore wise to get legal advice to make sure the option is properly drawn up and executed.

iv) Custom Farm Agreements

A custom farm agreement is not an interest in land. It is a contract. As it is not an interest in land, you cannot place a caveat against the owner's title to protect your agreement and warn third parties of its existence. If the landowner sold the property covered in a custom farm agreement to a third party who was unaware of it, you would have to sue the original owner for contractual damages and would have no right to continue performing custom work respecting the property.

Forms of Land Ownership

You may own land as a sole owner, tenant in common or joint tenant.

i) Sole Owner

If you are the sole owner of property, your name alone will appear on the Certificate of Title. You can deal with the property as you choose, except if the property is your "homestead" (defined as your "home place" - where your home and buildings are, and the adjacent land up to 160 acres). Homestead property can only be sold or leased if a non-owning spouse consents in a proper manner. An Offer to Purchase homestead property is also invalid unless a non-owning spouse consents (for more information on homesteads, see Page 41).

ii) Tenancy in Common

A tenancy in common exists when two or more persons hold undivided shares of the property. The property is not divided among the tenants in common and one tenant could not fence off a portion of the property and declare a right to its exclusive possession. Each tenant in common is entitled to the use of the whole property even if he holds an unequal interest. Tenants in common can hold land in unequal shares (for example, Jones can hold a one-quarter interest and Smith three-quarters). Any share can be transferred to a third party who then becomes a tenant in common with the others. The other tenants in common do not have to consent to the transfer. Each tenant in common has a right to receive his share of any revenue received from the property. Upon the death of a tenant in common, his interest passes to his heirs and not to the other tenant in common.

iii) Joint Tenancy

This is one way in which an estate in land may be owned simultaneously by two or more persons. It must be specifically created in the transfer through the use of such words as "to A and B as joint tenants and not as tenants in common". If these words are not used, the law will presume that the new owners will take the land as tenants in common.

The major feature which distinguishes the joint tenancy from the tenancy in common is the right of survivorship. This means that upon the death of a joint tenant, his interest passes immediately to the surviving joint tenant or tenants instead of to his heirs. Often a husband and wife will hold title as joint tenants. Upon the death of either spouse, the survivor automatically acquires full title to the property. The property does not become part of the deceased spouse's estate, so that many problems regarding "probate" (administration and settling of an estate) can be avoided with respect to the jointly owned property.

Where land is held in joint tenancy, neither joint tenant is entitled to sever the joint tenancy without the consent of the other joint tenants. This means that no joint tenant can transfer, mortgage or otherwise encumber his share of the joint tenancy without the consent of the other joint tenants.

Buying and Selling Property

i) Agreements of Sale

The Statute of Frauds provides that every agreement concerning the sale of land must be in writing or it is unenforceable. This means that every essential term of the sale which is agreed upon during the negotiations must be in writing. Parties must agree on the three essential elements of:

a) the parties;
b) the purchase price; and
c) the land.

It is also wise to include the date on which the purchase price is to be paid, the adjustment date for taxes, interest and rents and when possession of the property and clear title will be given to the purchaser. If the agreement of sale includes the vendor's homestead, the non-owning spouse must give his or her consent as set out in **The Homesteads Act** or the agreement is unenforceable regarding the homestead and may result in the entire agreement being declared invalid.

ii) Offer to Purchase

An Offer to Purchase land must also be in writing to be enforceable. An Offer to Purchase should specify:

(a) the name of the offeror (purchaser) and owner;

(b) a description of the land on which the Offer is being made;

(c) the amount the purchaser is willing to pay for it;

(d) other terms such as the date on which the Offer must be accepted, the date for possession of the property and the adjustment date for interest, taxes and rent;

(e) whether the Offer is conditional on any event (such as the obtaining of suitable financing).

The Offer must be signed by the purchaser and a deposit of money must be given to the vendor as consideration for the Offer. You can specify in the Offer that this money must be returned if the Offer is not accepted. In the event that the Offer is conditional upon financing, a date should be set for when the financing must be obtained, or the purchaser will have until the possession (or closing) date to raise the money. This means that the vendor's land may be tied up for a long time without any security that the purchaser will be able to close the deal. If a vendor is buying new property and he needs the sale proceeds to complete the deal, he will be in a difficult financial position if he commits himself to the purchase and then the first deal falls through.

If the vendor accepts the Offer, he signs the acceptance clause. If the land is his homestead, and his wife consents in the manner set out in The Homesteads Act, the Offer then becomes an enforceable Agreement of Sale on the same terms and conditions that were contained in the Offer.

If the vendor counter-offers, the purchaser must accept his exact terms (in writing) before the counter-offer becomes a binding Agreement of Sale.

A lawyer can be of great assistance in the preparation of the Offer to Purchase. For most persons, it is one of the biggest legal transactions in which they will ever be involved. It therefore deserves careful consideration and analysis so that the best terms, apart from price, will be included for your benefit.

iii) Transfers

The document which transfers title from one person to another is known as a Transfer. You can transfer all, or part, of your interest in land. (For example, a transfer can be made of the mineral estate only).

The Transfer is drawn up according to the terms of the Agreement of Sale (or the accepted Offer to Purchase).

The Land Titles Office charges a fee to register land transfers. The fees are based on a formula that is related to land values. Legal fees are in addition to the land titles fees. Lawyers often use the Law Society tariff (guidelines) in calculating their fees for land

transactions. You should ask in advance what legal fees and land titles charges you will be required to pay for a land transfer.

iv) Encumbrances

Any encumbrances registered against the title (such as caveats or builders' liens) or writs of execution registered against the vendor's lands will have to be discharged before the transfer of title is registered, or they will encumber the purchaser's title. You should therefore conduct a search of the title and ask for a General Registration Certificate respecting the vendor's name. Both can be obtained at the Land Titles Office covering the land in question. Before paying the purchase price, always make sure that a condition of the acceptance of the money is that all encumbrances affecting the title will be removed so that the purchaser will receive a free and clear title to the property.

An easement is the grant of a certain "right of way" over property and is not an encumbrance in the same sense as a caveat or builders' lien. Examples of easements are rights of way for pipelines, utilities or roadways. An easement cannot be removed unless the person or agency to whom it was granted discharges it. An easement may therefore stay on the tile even though ownership changes several times.

v) Builders' Liens

The Builders' Lien Act applies to all construction contracts entered into after January 1, 1986. If you are the owner of property and hire a contractor to perform work or furnish materials leading to the improvement of it, you are under an obligation to maintain a "holdback" of 10% of the contract price for the work. Except for residential improvements, the owner is then under a legal obligation to set up and maintain a separate holdback trust account at a chartered bank, credit union or trust and loan corporation. The account must be administered jointly with the contractor or sub-contractor as co-trustee. The owner is required to pay into the holdback trust account all holdbacks in the sums required. The amounts deposited then constitute trust funds for any lien claimant. All payments out of the holdback trust account will then require the signatures of both the owner and the contractor set up as co-trustees. You must holdback the amounts in the holdback trust account until 40 days after a certificate of substantial performance is obtained, the contract is abandoned or the contract is completed. If you fail to maintain the holdback for the required length of time, you will be held liable as owner for any builders' liens registered against your land to the extent of the amount of any deficiency in the holdback trust account. In addition, you may be held to be in breach of trust and subject to fines of up to $50,000.00 and imprisonment for up to two years.

For example, suppose you hired Jones to build a barn on your property at a contract price of $20,000.00. Since this is not a residential improvement, you will be required to set up a holdback trust account with your bank or credit union with Jones as a co-trustee. You would then be required to hold back 10% of the contract price or $2,000.00. If Jones sub-contracted Smith to help him build the barn and did not pay him, Smith could claim his contract price from the $2,000.00 holdback in the account for up to 40 clear days after the barn was substantially completed and a certificate of substantial performance has been issued. If you did not keep back the holdback, you would be liable to pay up to $2,000.00 again or have a builders' lien registered against the title to your property.

If you feel that a builders' lien has been registered improperly, you can file a notice to lapse builders' lien with the Registrar of the Land Titles Office. The lien claimant will then have to prove that the builders' lien was registered properly or it will be removed from the title.

vi) Minerals

The mineral rights in several areas in Saskatchewan are reserved to the Crown. However, if they are included in the title, they will pass with the land unless they are reserved by the vendor. The purchaser must agree if the vendor wishes to retain the mineral estate before the Agreement of Sale is finalized or the purchaser will be presumed to get the minerals.

vii) Leases

If a lease is registered against the title, it must be honoured by any subsequent purchaser unless the tenant gives it up. If a tenant has leased lands for less than three years and actually lives on the leased land, the lease does not have to be registered and it will encumber the title. It is therefore wise to conduct a physical survey of the property to find out if such a situation exists prior to offering to buy farmland.

viii) Fixtures

An Agreement of Sale includes all things which are solidly attached to the ground or buildings (for example, granaries on foundation). Therefore, if the purchase price does not include all fixtures, list which ones are included in the sale and which ones can be removed by the vendor.

Mortgages

Under the land titles system, a mortgage is a charge which can be registered on the Certificate of Title. In order to be able to register a

mortgage directly against the title, it must be in the form set out in **The Land Titles Act**.

You may wish to have a private loan, using your property as collateral, which is not registered directly against the title (known as an "equitable mortgage"). To do this, most lending institutions would require you to give up your duplicate Certificate of Title and would then register a caveat (or warning) against the title. An equitable mortgage is often used to secure short term borrowing. With respect to both types of mortgages, the one which is registered first at the Land Titles Office will have priority over those registered later. In case you default and a court orders the property to be sold, the first mortgage will be paid out before the second, and so on down the line.

In Saskatchewan, every mortgage must be redeemable. This means that the mortgagor (borrower) must be able to wipe the mortgage off his Certificate of Title at some point in time by complying with the terms of repayment set out in the mortgage.

The Farm Security Act provides that where land is sold under an Agreement for Sale or mortgaged (whether by legal or equitable mortgage) for the purpose of securing the purchase price or part of the purchase price of land, the vendor's or mortgagee's right to recover the unpaid balance is restricted to the proceeds from sale of the land and to cancellation of the mortgage or Agreement for Sale. No action can be brought on the basis of a personal covenant for payment contained in the Agreement for Sale or mortgage. Therefore, if a borrower defaults in his mortgage payments (or payments under an Agreement for Sale), the lender is limited to bringing an action for foreclosure and judicial sale of the property in order to collect the money owing under the mortgage and cannot sue the borrower. Foreclosure is a lengthy court procedure. A vendor or mortgagee cannot get a final order of foreclosure against a homestead, if a farm or his family is residing on it, unless the farmer has waived this protection and obtained an Order from the Farm Land Security Board.

A farm corporation cannot waive the protection of this Act.

Homestead Provisions

In Saskatchewan, a non-owning spouse must consent in writing to the transfer of any interest in the home or home quarter when it is being transferred to someone other than the non-owning spouse. This means the non-owning spouse must consent to mortgages, leases, Offers to Purchase, Agreements for Sale, Options and Transfers, to name but a few. If the non-owning spouse does not consent, the agreement is invalid. The non-owning spouse must be examined separately from the owning spouse by a qualified examiner (such as a lawyer or notary public) and must acknowledge that he or she is giving up the homestead rights voluntarily.

Under the Act, only the interest of those spouses who are or have resided in Saskatchewan at some time since the marriage are protected. The Act merely gives the non-owning spouse the right to prevent the spouse who is the registered owner from disposing of the homesteads without his or her consent. It does not give her any rights of ownership in the homestead property. More than one property can be viewed as a homestead. The only requirement is that the husband or wife has lived on it some time during the marriage.

A spouse can file a homestead caveat to protect his or her claim and, as more than one piece of property can be a homestead, he or she is allowed to file a homestead caveat against more than one piece of property.

Improvements Under Mistake of Title

If, for some reason, you make lasting improvements to land (for example, clearing bush) and later discover you do not own the land, you may have a claim against the land for the value of the improvement. The owner would then have to pay you for it. If the value of the improvement is substantial (for example, building a house), a court may order that the land be transferred to you on the condition that you would pay the owner a reasonable price for it.

Line Fence Act

If adjoining landowners want to erect a fence on the boundary of their properties, both must pay in equal shares for the cost of erecting and maintaining it. Where one landowner builds a boundary fence and the other landowner did not want it, but later uses it (because, for example, he buys livestock), he must pay a portion of the present value of the fence and share in maintenance expenses.

If landowners cannot agree on what is a lawful fence, the location of the fence, the proportion of the costs, necessity for repairs, etc., each can appoint an arbitrator who shall meet and determine this. If the arbitrators cannot agree, an umpire must be appointed to decide the matter.

Building Near a Provincial Highway or Other Road Allowances

You cannot erect a building or excavate a well or dugout within 90 metres of a provincial highway unless you have been granted a permit. To find out where this restriction applies, and how to obtain a permit, contact the Department of Highways, Engineering Division, Permit Office, 1855 Victoria Avenue, Regina (phone 787-4848).

The Rural Municipalities also have the authority to pass bylaws forbidding the erection of buildings, planting of trees and shrubs and

placement of portable buildings and machinery within 150 feet from the centre line of any road allowance other than a provincial highway or within 300 feet from the intersections of road allowances other than provincial highways. You should therefore contact the Secretary-Treasurer of the Rural Municipality in which your property is located to find out whether such a bylaw has been passed.

Expropriation

Whenever your land is being expropriated by the Crown or any other authority with the power to expropriate, certain procedures must be followed.

i) Notice

The expropriating authority must give notice before entering onto your land for tests or surveys. It must then give you notice of what it wants (for example, an easement, the right to remove sand, gravel and clay, or full rights to your property). You can apply to the Public and Private Rights Board, Room 207, 3988 Albert Street, Regina (phone 787-4071) for a review of the route, situation or design the expropriating authority plans to use. The Board may conduct public or private hearings to determine whether they are proper.

ii) Compensation

The expropriating authority must make a reasonable effort to purchase the land it plans to expropriate (unless the expropriation is of an easement or right to remove earth). If you feel the amount offered as compensation for your land is too low, you can apply to the Public and Private Rights Board for mediation.

iii) Taking Possession

If you do not accept the expropriating authority's offer to purchase your land, it can file a Declaration of Intention at the Land Titles Office. This transfers ownership from you to the expropriating authority. This can be done without your consent. The expropriating authority then has four months to serve you with an offer of compensation. You can require the expropriating authority to give you an evaluation report setting out how it valued your property and improvements to arrive at the figure. If you feel the amount of compensation is too low, you can accept the cheque and then commence a court action for further compensation. You have two years from the date the property was expropriated to bring the action. Your claim can be joined with those of other landowners whose property has also been expropriated. In proving your claim you will have to establish the best use which can be made of the land, the damage caused to you by severing that land from the rest of your land and the cost of replacing the land.

iv) Removal of Earth

The expropriating authority does not have to attempt to purchase the right to remove earth, clay, stones, gravel, sand or other material before expropriating them. It can enter onto your land and take the materials and serve you with notice up to 30 days later. It then has four months to come up with an offer of compensation. If you are unhappy with the amount, you can go to court.

v) Easements

An easement can also be expropriated before an attempt has been made to purchase it. **An easement is the granting of a "right of way" over your property, usually for public utilities (such as** telecommunications facilities). After an easement has been expropriated, you must receive notice. Within four months, an offer of compensation must be made. If you feel the amount is too low, you can go ask the Public and Private Rights Board to mediate (if the easement is being taught by the Crown or a Crown Corporation), or to Court.

Water Rights

i) Using or Diverting Water

Under the Water Corporation Act, the property in and the right to the use of all of ground water or surface water (including rivers, streams, lakes, lagoons, creeks, etc.) is vested in the Crown. If you want to use water out of any source or divert water, you must apply for a license from the Saskatchewan Water Corporation.

At the time of your application, you must submit a detailed plan of the proposed works, pay the prescribed fee, and provide any additional information or material as may be requested by the Corporation.

After the application is received, the Corporation will determine how others' rights to use the water will be affected and what easements or consents will be necessary (for example, if you need to construct a pipeline to carry the water across someone else's property, you would require an easement to do so). In addition, the Corporation will forward a copy of the application to the Minister of the Environment and make any arrangements it considers necessary to advertise the application.

If any objections are received within 30 days, the Corporation is required to enquire into the objections and may conduct investigations or hold public meetings. Any person who claims to have suffered or anticipates that he may suffer injury, loss or damage by reason of the construction, extension, alteration or operation of any works may file a written complaint with the Corporation. The Corporation shall then

serve notice of the complaint on all interested parties. Each party is then entitled to be heard on the complaint and to be represented by legal counsel. Decisions are then to be made within 18 months from the day the corporation received a complaint. Any person affected by the decision or order of the Corporation may appeal the order or decision to the Water Appeal Board.

Where the Corporation grants its approval, the Corporation forwards to the Registrar of Land Titles a notice of its approval and the lands affected by the approval. The Registrar shall then register the Notice against the lands described in the notice. Upon registration, the terms and conditions under the approval are binding on all subsequent owners of the lands.

ii) Cancellation or Suspension of Approval

If you have been granted approval to use or divert water, the Corporation has the power to cancel, alter or suspend any approval issued by it where the person who has the approval has ceased to exercise the rights granted under it, defaulted in paying any fees associated with the approval, fails to comply with any terms and conditions of the approval or makes unauthorized changes to the works. The Corporation is required to give the holder of the approval 30 days' notice of its intention to cancel, alter or suspend the approval together with its reasons therefore. The holder has 30 days to file an objection to have the matter heard.

iii) Prior Grants of Water Rights

Any water rights or privileges granted to any person prior to the establishment of the Saskatchewan Water Corporation continue to remain in full force and effect unless cancelled by the Corporation. Where it considers it to be in the public interest to do so, the Corporation has the power to cancel any pre-existing rights given to a person to use any water. However, the holder is entitled to compensation from the Crown for the actual value of structures or works used by the holder that were lost through the cancellation.

iv) Expropriation

The Corporation currently has the power to expropriate without the consent of the owner, land, building, equipment or machinery that it considers necessary for the "purposes of the Corporation". The Corporation is required to pay reasonable compensation to the owner for the loss thereof.

v) Civil and Criminal Liability

Any person who diverts and impounds surface water without having obtained proper authority is liable to a civil action for damages to any person who suffers damages or loss as a result.

Also, any person who takes or uses water without having authority from the Corporation to do so, or fails to comply with an order of the Corporation or hinders or obstructs the Corporation in performing its duties, or knowingly attempts to mislead the Corporation, is guilty of a summary offence and may be fined up to $10,000.00.

Farm Ownership Provision

The Farm Security Act is the provincial legislation which governs the amount of land which can be owned by non-residents of Saskatchewan.

The Farm Security Act currently provides that Canadian residents who are non-residents of Saskatchewan can own up to 320 acres, or two quarter sections of farmland, whichever is greater. Persons who are not residents of Canada or become non-residents of Canada are restricted to 10 acres. Similarly, a non-agricultural corporation in which the majority of voting shares are legally and beneficially owned by Saskatchewan residents or agricultural corporations may own up to 320 acres, or two quarter sections of farmland, whichever is greater. Non-agricultural corporations which do not meet these prerequisites are limited to 10 acres no matter when the land was acquired. These corporations have until January 1, 1994, to dispose of the excess farmland.

An "agricultural corporation" is defined as a corporation that is engaged in the business of farming and majority of issued voting shares of which are legally and beneficially owned by producers who are resident of Saskatchewan. An agricultural corporation is not restricted in the amount of farmland it can own.

You must reside in Saskatchewan for a minimum of 183 days of the year to be classified as a "Saskatchewan resident" for the purposes of this legislation. You must reside in Canada for a similar number of days to be classified as a "Canadian resident".

If you are not a Canadian resident, the year in which you acquired the farmland will determine the acreage to which you are restricted in owning.

If a non-resident Canadian acquired any amount of land prior to March 31, 1974, the land can be held indefinitely, but it cannot be transferred to a non-resident without the permission of the Farm Ownership Board.

If a non-resident Canadian acquired land between April 1, 1974 and September 14, 1977, that person is restricted to owning farmland with an assessed value for municipal taxation purposes of $15,000.00 or less as at the date the land was acquired.

If a non-resident Canadian acquired farmland between September 15, 1977 and May 5, 1980, he is restricted to holding 160 acres and he can hold the land for so long as he wishes. He will not be able to transfer it to a non-resident without the permission of the Farm Ownership Board.

If a non-resident Canadian acquired farmland between May 6, 1980 and June 30, 1988, he is restricted to holding 10 acres and he can hold the land for so long as he wishes. He will not be able to transfer it to a non-resident without the permission of the Farm Ownership Board.

If a non-resident of Saskatchewan inherits land in excess of the limits imposed by **The Farm Security Act**, he has five years from the date of his acquisition of the landholding to reduce the landholding to the size permitted by the **Act**. If you inherit farmland while you are a resident of Saskatchewan, you can hold your interest in the farmland for so long as you wish, however, you cannot transfer the farmland to a non-resident of Saskatchewan without the permission of the Farm Ownership Board.

With respect to individuals, if you acquire land while a resident of Saskatchewan and you have been a resident of Saskatchewan for 5 years in the past, then you are not governed by these restrictions. As well, in these circumstances you can transfer your farmland to your spouse, parent, grandparent, son, daughter, grandson, granddaughter, brother, sister, nephew or niece, or the spouse of these relatives and they can hold the farmland for their lifetime. They do not have to be Saskatchewan residents at the date of the transfer to them, nor do they have to become Saskatchewan residents to be able to continue to hold title to the farmland. However, they cannot transfer the farmland to non-residents of Saskatchewan without an exemption from the Farm Ownership Board.

If non-residents or non-agricultural corporations wish to be exempted from these provisions, they can make a written application to the Saskatchewan Farm Ownership Board, 3130-8th Street East, Saskatoon, S7H 0W2, phone 933-5015. The Board will review the application and usually imposes conditions on the non-resident or non-agricultural corporation to reduce its landholdings within a specified periods of time and, if the Order is not complied with, a Court can order the sale and transfer of the property.

You an also obtain general information about the provisions of the legislation by calling The Farm Ownership Board.

XI. Labour Law

As the size of the average farm enterprise has expanded considerably over the past few years, it has become increasingly necessary for farmers to hire "extra help". It is therefore essential that farmers understand the legal implications of the employer/employee relationship.

Most provincial and federal legislation regulating conditions of employment does not apply to the farm industry. **The Saskatchewan Labour Standards Act** which sets out the minimum wage to be paid employees, hours of work, overtime, annual holidays and the length of notice to be given in terminating employment does not apply to farmers. Therefore, in the farm industry, the "common law" basically governs the employer/employee relationship and courts rely on past court cases in resolving disputes.

Contract of Employment

A contract of employment can be either written or verbal. For greater security, you should set out the terms of the employment in a written contract signed by you and your employee. An employment contract running longer than a year must be in writing to be legally enforceable.

The written or verbal contract should set out the hourly or monthly wage to be paid to the employee. As neither the federal nor provincial legislation concerning minimum wage applies to farmers, this will basically be determined by supply and demand. The contract should also set out the required hours of work and whether overtime will be paid, or hours will be banked. You are not required to give your employees statutory holidays or any other type of annual leave, so the contract should state which, if any, holidays your employee will be entitled to take. The amount of notice required to terminate the contract of employment should also be specified and this will likely depend on the length of the employment.

Enforcing the Contract

Even where a written contract of employment exists, the common law provides that a court cannot force an employee to work. However, if an employee decides to breach his contract of employment, you may be able to sue him for damages. Obviously your claim will be much better if you can point to the terms of a written contract. You would also have to be able to show what damages you suffered as a result of your employee's wrongful actions. This difficult problem of proof often means that you cannot prove your claim. As well, a court

would expect you to do all you could to reduce your damages. Therefore, you should attempt to hire a new employee immediately.

Employees can also sue employers who do not honour their employment contracts. The civil courts, including Small Claims Courts, would be available to an employee with a claim for wages. **The Wages Recovery Act** provides that an employee having a claim for wages can swear a complaint before a Provincial Magistrate. The Magistrate can order the employer to pay all wages owed the employee to a maximum amount of $500.00. This would be the cheapest method to collect wages, however, it should be noted that the Act does not apply to contracts of employment for more than one year unless the contract is in writing.

The Thresher's Lien Act provides that anyone who threshes or combines grain has a 60 day lien on the grain for the amount he is entitled to be paid. If he is not paid, he can seize and sell a sufficient quantity of the grain to cover his remuneration. He must give the owner of the grain written notice of his intention to seize. The Thresher's Lien has priority over all other security interests and Writs of Execution.

The Thresher Employees Act provides that an employee of someone hired to combine grain can claim his wages directly from the owner of the grain if he feels his employer might not pay him.

Liability for Employees

You are liable for any wrongful acts your employee commits in the scope of his employment. All the injured party needs to establish is that the employee caused the damage while engaged in performing work for you. However, the employee is also liable for his own wrongful acts. Therefore, if you are held liable for the negligence of your employee, you can sue your employee for the amount of the Judgment.

Liability to Employees

The Workers' Compensation Act provides that employers shall contribute to a fund out of which employees injured in the course of their employment can claim compensation without having to prove their employer was negligent. The Act does not apply to the farm industry, but a farmer can decide to voluntarily contribute to the scheme. Where a farmer remains outside the Act, his employee must take civil action and successfully sue him to obtain damages for injuries suffered on the job.

The farm employer has a legal obligation to provide and maintain work premises in as safe a condition as reasonable care by a prudent employer can make them. You therefore have a duty to inspect the

work premises to ensure that there are no "hidden traps" and to warn your employees of all damages existing on your property.

In order to successfully obtain damages in court, an employee would have to establish that his employer should have discovered and eliminated a particular hazard on the working premises (for example, improperly placed shields on a power take off).

Often farm insurance policies will provide coverage to farmers found liable in this type of situation.

Other Requirements

Farm employers are subject to federal legislation concerning the deduction and remittance of income tax, Canada Pension Plan contributions and Unemployment Insurance premiums. Upon hiring an employee, you should contact Revenue Canada, Taxation, 1955 Smith Street, Regina S4P 2N9 (phone 780-6015), to obtain an Employer Number and to get information regarding the employee deductions and employer remittances which you must submit. Remittances and deductions must be sent to the Receiver General for Canada no later than the 15th day of the month following the month in which the employee received the remuneration to which the deductions apply or a penalty will be assessed. You must also disclose your employer number on every remittance form you submit.

XII. Laws Concerning Animals

Many provincial laws have been enacted to control and regulate animals. Farmers should be aware of their rights and obligations with respect to wildlife, strays and livestock.

Wildlife

The Wildlife Act provides that all wildlife belongs to the Provincial Crown. "Wildlife" is defined in the Act as "a vertebrate animal or bird of any species including fish that is wild by nature in the province".

When hunting wildlife, the rules set out in the **Wildlife Act** and the **Regulations** must be obeyed. It is your obligation as a hunter to familiarize yourself with these rules for, if you do not obey them and are caught, you can be fined and lose your hunting privileges. You should therefore read all the information which accompanies your license at the time it is issued.

Some of the most important rules you must obey are:

a) You cannot allow another person to use or carry your licence;
b) You cannot hunt out of season;
c) You cannot hunt without a licence;
d) No person under the age of 16 can purchase a licence without the written consent of his parent or guardian;
e) No person under the age of 16 can hunt any wildlife with a firearm unless he is under the direct supervision of his parent, guardian, or an adult;
f) You cannot hunt while intoxicated;
g) You cannot carry a loaded firearm in a vehicle;
h) Where land has been posted with signs bearing the words "No Trespassing", "No Hunting" or similar words, you cannot hunt within the boundaries of such land except with the consent of the owner or occupant;
i) Where land is not posted, you should still obtain the consent of the owner or occupier before hunting or you may be liable for trespassing.

If one of your animals is killed or wounded by a hunter, notify the R.C.M.P. immediately. A government fund has been set up so that you can be reimbursed for veterinarian's fees and, if the animal is killed, for its market value.

Wildlife Damaging Crops

You do not need a permit to use equipment other than aircraft or firearms to scare migratory birds which are damaging your crops.

You do need a permit to scare migratory birds with aircraft or firearms. You also need a permit to kill migratory birds. This type of permit will only be granted if the scare techniques you use are unsuccessful and are usually only granted respecting ducks. Both types of permits will have an expiry date and can be obtained from the nearest detachment of the R.C.M.P. or a Conservation Officer (contact the Department of Parks, Renewable Resources, 3211 Albert Street S4S 5W6 (phone 787-2314).

Stray Animals

A "stray animal" is any head of cattle, horse, sheep, goat or swine or inter-species hybrid of the same type which is not on the premises of its owner or under the effective control of its owner. Since 1977, it is an offence under **The Stray Animals Act** to allow your animals to run at large within the province unless you live in a municipality which has passed a bylaw permitting this. Such a municipality is often referred to as an "open herd" municipality. You can find out if the municipality is an "open herd" municipality by contacting the Livestock Branch of the Department of Agriculture and Food, Walter Scott Building, Regina (phone 787-5140) or the Secretary of the Rural Municipality in which the animal was found.

In an "open herd" municipality, if a lawful fence surrounds your field or hay stack, you may restrain or impound any animal which wanders onto such property. Its owner must pay for any property damage it causes. A "lawful fence" is defined as a substantial fence consisting of:

a) woven wire secured to posts not more than 10 metres apart and not less than 100 cm. above ground; or

b) not less than three barbed wire strands fastened on substantial posts not more than 20 metres apart; the wire being fastened to droppers not more than five metres apart and the strands separated by a distance of approximately 35-40 cm.; the lower strand not more than 35-40 cm. from the level of the ground; or

c) three or more barbed wire strands fastened on substantial posts not more than five metres apart, the strands being separated by a distance of approximately 35-40 cm., the lower strand not more than 30-35 cm. from the level of the ground; or

d) four or more barbed wire strands fastened on substantial posts not more than 7.5 metres apart separated by a distance of approximately 35-40 cm. and the lower strand not more than 30-35 cm. from the level of the ground; or

e) rails, boards or slabs not less than 1.5 metres in height, the lowest one not more than 30-35 cm. from the level of the ground, securely nailed, tied or otherwise fastened to posts not more than five metres apart, and the rails, boards or slabs placed in such a position as to prevent passage of the animal.

A fence surrounding either growing crops or crops being harvested is not a lawful fence unless it is at least 2.5 metres from such a crop. A fence must also be at least six metres from a stack of hay or grain to be a lawful fence.

In a "closed herd" area, (where no bylaw permits animals to run at large), if you find a stray on your property, you may impound (confine) it. If you know the owner, you must notify him immediately that you have discovered the stray. You are allowed to charge the owner for any damage the stray has caused. As well, you must supply the stray with food and shelter commonly given to animals of that type and the owner must reimburse you for this. If the owner pays you the charges and fees within 24 hours of being notified that you have the stray, you must turn over the stray to him. If the owner does not pick up the stray within 24 hours, you should notify the Secretary of the Municipality. Where you do not know who owns the stray, you must notify the R.C.M.P. and the Secretary of the Municipality in which the stray was discovered.

If, within 72 hours of the time notice was given to the Secretary or the R.C.M.P., the stray has not been removed by the owner, you must deliver it to the nearest accessible pound unless you are appointed poundkeeper by the Secretary of the Municipality and therefore have the authority to impound the stray on your property.

The owner of a stray is liable for the fees and charges of the finder, the poundkeeper and the municipality. If these have not been paid within 14 days, the stray can be sold at public auction. The owner will receive the proceeds left over after all fees have been paid.

A stray can only be destroyed if it is valueless and a veterinarian appointed by the Secretary of the Municipality verifies this in writing.

You are not liable for any damage to a stray while it is on your property unless the animal injures itself in an excavation which was not surrounded by a lawful fence.

Animals in Distress

If you find an animal which has been injured, you should notify the R.C.M.P. immediately. Peace officers have the authority to destroy animals in situations where it appears they cannot live without undue suffering.

Dogs

You may kill any dog which is in the act of pursuing, worrying or destroying cattle, horses, pigs, sheep or poultry outside the enclosed land occupied by the owner of the dog.

You may also swear a complaint before a Justice of the Peace that someone's dog has within the preceding three months worried, injured or destroyed cattle, horses, pigs or poultry outside the enclosed land occupied by its owner. The Justice of the Peace may require the owner to appear before him and upon the evidence of a witness other than yourself as complainant, the Justice of the Peace may fine the owner or order the dog killed. If you have a claim for damages caused by the dog, you could commence a court action against its owner.

Inspection of Animals

Inspectors appointed by the Minister of the Department of Agriculture and Food have the authority to enter into or upon any premises other than dwelling houses for the purpose of inspecting animals for the prevention and control of diseases.

If you have an animal which is suspected of being diseased, you must give the inspector free access to your property and assist him in his duties concerning the animal.

If an animal has been ordered destroyed in the course of preventing disease, you may be compensated to some extent for its value.

Livestock Operations

If you want to construct a building intended for the rearing, confinement or feeding of poultry, hogs, sheep or cattle, you may need a permit issued by Agricultural Engineering Branch, Walter Scott Building, 3085 Albert Street, Regina S4S 0B1 (phone 787-6584). Before building any barns, animal shelters or corrals, you must submit an application setting out where the structure will be built and for what it will be used. The Agricultural Engineering Branch will have an Inspector determine whether you need a permit. A permit will generally be granted as long as you are 1,000 feet from your neighbour's dwelling and the nearest watercourse and at least one mile from the nearest urban centre.

Before buying property, you should discuss your plans for a future livestock operation with the Branch. If possible, get an Option (a future right to purchase) on the property concerned until you are sure your plans will be approved. The Branch can also give you advice concerning plans for structures and advice on how to build them.

Inspectors have the authority to inspect your property and operation and, if you obstruct them in the carrying out of their duties, you can be charged and fined.

If a livestock operation is being conducted in such a manner that it is unsanitary, constitutes a nuisance due to odours, insects or rodents at or about the building or site, or may pollute land or waters, you may be ordered to take action to remedy the situation. If you fail to comply with the order, you can be fined.

Brands

You may apply to Brand Registrations, Livestock Branch, 3085 Albert Street, Regina S4S 0B1 (787-4682) to have a brand registered. A cattle brand must consist of two "characters" (signs, letters or numerals) or three characters if two are not available. You must renew a brand every four years.

Once you have registered a brand, no one else can use it. If an animal bears your brand, you are presumed to be its owner unless a memorandum of sale has been executed to transfer ownership to another person.

If you sell any branded stock, you must give the purchaser a memorandum of sale. The purchaser must then present the memorandum of sale if the animals are subsequently inspected before being resold or transferred out of the province.

Shipping Cattle and Horses

In order to ship cattle and horses, you must fill out a manifest which shows proof of ownership. You can get a manifest book from any stock Inspector or stockyard.

If you are shipping your own cattle and horses to market, you must fill out the manifest to show your name and address and all the animals in the truck (including any branded animals). At the stockyard, the animals are inspected and three copies of the manifest must be left with them. You keep one copy and, if the livestock are purchased, you receive your money for them based on the description in the manifest.

If you hire a trucker to haul your livestock to market, you must give him four copies of the manifest to transport with them.

If you are shipping livestock to a point outside the province, contact the livestock inspector at the nearest auction market to determine if the livestock will be inspected in accordance with Saskatchewan regulations at that point. If not, the livestock should be inspected at your farm or the closest market near your farm. You would have to complete a manifest (one copy for you and four to go with the animals). The Inspector would sign and keep two copies of the manifest after his inspection.

The vehicle used for shipping livestock must be equipped with bodies or racks of proper construction and of sufficient strength for carrying such livestock. The floor of the vehicle must have suitable footholds or be covered with sufficient sand or other non-slip material to prevent slippage.

Certain space requirements must also be observed. For example, there must be 6,785 square centimetres of space for each 410 kilogram animal being shipped.

Every vehicle used to transport livestock must be properly ventilated to prevent suffocation, excessive draughts or over exposure to heat or cold. The front of the body or rack of the vehicle must at all times be closed to the height of the backs of the tallest animals being transported in the vehicle. Where the temperature is -20 C to 0 C, the sides must have openings equal to at least 20 percent of the area of the sides where the top is open and not more than 50 percent of the area of the sides where the top is closed. If swine are being transported, the sides must have openings equal to at least 10 percent of the area of

the sides where the top is open and not more than 25 percent of the area of the sides where the top is closed.

If you require further information regarding whether your vehicle is properly equipped for transporting livestock, contact the Department of Agriculture and Food, Livestock Branch, Walter Scott Building, Regina (787-5140).

XIII. Wills

A will is one of the most important legal documents you will ever sign. It allows you to direct how your property will be dealt with after you die. Proper estate planning and tax and legal advice is essential in drawing your will.

Who Can Have A Will

In Saskatchewan, any mentally competent person over 18 years of age can draw up a will. If someone with questionable mental capacity wishes to draw up a will, it is a good idea to have that person certified as competent to do so by a qualified physician.

In Saskatchewan, a person who is or has been married or is a member of the Armed Forces can make a valid will even if he or she is under 18.

Writing

A will must be in writing. It can be written on any substance. A will scratched on a tractor fender by a farmer who lay dying was held to be a proper will in Saskatchewan.

Signature

A will must be signed by the person making it (referred to as the "testator"). The signature must be placed at the bottom of the will, and must be placed on the will after it is completely drawn up.

If the will is not entirely in the testator's handwriting, it must be signed in the presence of two witnesses who must also sign the will.

If the will is entirely in the testator's handwriting (called a "holograph will") and there are no words typewritten on the page or written by someone else, the testator's signature does not have to be witnessed. However, be very careful about this. A printed will form obtained from a stationer is not a valid will if signed only by the testator. It is

only where all the writing in the will is in the testator's handwriting that a testator does not need his signature witnessed by two witnesses.

Witnesses

Anyone, including someone under the age of 18, can witness a testator's signature to a will provided they would be capable of giving evidence that they saw the testator sign his will. It is a good idea to choose witnesses who are easy to locate. Blind persons or those of unsound mind would not be competent witnesses.

A bequest in a will to a witness or his spouse is invalid. If you are leaving any part of your estate to a witness or to the spouse of the witness, have someone else act as your witness. However, a will witnessed by a beneficiary or the spouse of a beneficiary is not invalid -- the beneficiary or his spouse would not be able to accept the bequest.

Changing a Will

Never cross out a portion of a will or make any changes to it as this may make the whole will invalid. A will can only be changed by a "codicil" (clause which is added on to the end of the will), or by having an entirely new will drawn up. A codicil must be witnessed by two witnesses unless the will is a holograph will in which case the testator's signature alone is sufficient. Often codicils which eliminate beneficiaries will cause hard feelings on the part of the beneficiary when he learns that the testator changed his mind. It is likely better to draw a new will in this type of situation.

Revocation by Marriage

A will is automatically revoked (made invalid) when you marry, unless you specify that the will is being made in contemplation of marriage to a particular person whom you later marry.

Effect of Divorce

Upon a decree absolute of divorce, any provision in a will that benefits a former spouse, or that names the former spouse as trustee or executor is automatically revoked. The will is dealt with as though the former spouse had predeceased the testator unless the will specifically states otherwise.

Other Forms of Revocation

A will is also made invalid if you draft a later will or if you burn, tear or destroy a will with the intention of revoking it.

Executors

An executor is the person appointed by the testator to take title to all the deceased's assets, pay all of the estate's debts, have the will probated and distribute the assets to the beneficiaries listed in the will. The choice of an executor is a very important decision. You should choose someone who knows you and is interested in you and your family. Choose someone who is young enough to outlive you. It is a good idea to choose someone who lives in the province and has some understanding of a farm enterprise. The most logical choice is one of the beneficiaries or a relative.

You can appoint two or more executors, but bear in mind that all executors must sign all documents and cheques and approve each other's decisions. It is a good idea to appoint an alternate executor who will act if the first one dies before you do or refuses to act as your executor. Ask the person if he will act as your executor before you appoint him in your will. In situations where an executor is dead, incapable or refuses to act, the courts will appoint an administrator.

The basic duties of either the executor or administrator in handling an estate are:

a) to make sure that funeral arrangements are looked after and paid for out of the estate (an executor can overrule a spouse or child regarding funeral arrangements);

b) to find the most recent will and read it;

c) to appoint a lawyer;

d) to take an inventory of the deceased's assets;

e) to keep the farm operation running smoothly. This includes making sure all vehicles are re-licensed within 30 days of the death, all buildings are covered by adequate fire insurance and all liquid assets of the estate are invested in interest-bearing accounts;

f) to apply to have the will probated by the courts. "Probate" means the court approves the will and the executor;

g) to pay all legal debts, taxes and expenses of the testator;

h) to have all tax returns for the deceased and the estate prepared and filed;

i) to distribute the assets in the estate to the beneficiaries named in the will or under the Intestate Succession Act;

j) to account to the beneficiaries regarding how the assets were distributed;

k) to account to the courts regarding how the assets were distributed unless all beneficiaries sign "Releases" saying this does not have to be done.

Clauses in a Will

i) Opening

The will should be dated and indicate the full name and address of the testator;

ii) Revocation Clause

There should be a clause stating all former wills and codicils are cancelled;

iii) Executor

An executor, co-executors and alternative executors should be named;

iv) Payment of Debts

You should specify what assets you want the executor to use in paying the debts of the estate. This could be cash in a chequing account, grain on hand, etc.;

v) Distribution of the Estate

If you want certain beneficiaries to receive certain assets, you must indicate this. It is important to indicate how you want the assets you do not specifically mention to be distributed, as well as who is to get the assets in the event that all the beneficiaries die before you do;

vi) Guardians

Guardians can be appointed to look after minor children. They cannot supervise that portion of the estate which is left to the minor children unless the will directs it. If the will does not direct it, the Public Trustee oversees the investments and disbursements. If the will directs the guardian to do this, the guardian must obtain a security bond approved by the Court of Queen's Bench unless the guardian is also appointed a Trustee by the will. In selecting a guardian, choose someone who will raise your children in a manner you consider proper. You should choose someone who has views on religion and education which are similar to yours. Make certain the guardian is

young enough to live past your children's eighteenth birthday. Consider whether the guardian is capable of handling money properly;

vii) **Common Disasters**

It is wise to indicate what will happen if you and your main beneficiary die at the same time in an accident. The law presumes the oldest died first and this means that the estate will pass from the oldest to the youngest and then to the youngest's beneficiaries. The estate will therefore be probated twice (which is expensive and time consuming) and will often end up going to people you never intended to receive it;

viii) **Limited Survival**

It is also wise to state that the main beneficiary should outlive you by a specified number of days (usually 15 to 60 days) before becoming entitled to your estate. Then if you and the beneficiary are in a common accident and she/he is injured, she/he must outlive you by more than a few hours before becoming entitled to the estate;

ix) **Witnesses**

You need two witnesses to a formal will. If a will is entirely in your own handwriting, you do not need witnesses.

Matrimonial Property Act

This Act assumes that marriage is a partnership and that all matrimonial property is to be shared equally. "Matrimonial property" is defined to mean all property acquired during the marriage. This includes inflationary increases on property that was owned prior to the marriage. For all property other than the matrimonial home, if it is brought to the marriage, its value at the time of the marriage is exempt. The matrimonial home is 50/50 divisible no matter when it was acquired. The "matrimonial home" is defined to mean the home residence and up to 160 acres surrounding it. The Act provides that a spouse can commence an application for the division of matrimonial property up to six months after the grant of Letters Probate or Letters of Administration concerning the estate of his or her spouse. This means that the amount of the distributable property in an estate can be reduced by a court order under **The Matrimonial Property Act.**

You should therefore consider how this Act can affect your will and you would be wise to consult your lawyer. As an example of what can happen under the new Act, consider the following situation. Farmer Jones draws his will leaving half of his estate (property in his name) to his wife and half to his son, Harold. After his death, his wife makes an application under the Matrimonial Property Act and the court declares that she is entitled to half of the property registered in

her husband's name. His estate is then reduced by half. Under the terms of the will, his wife would still be entitled to half of what remains in his estate, so that she would end up with three-quarters of what Farmer Jones considered to be "his estate" at the time he sat down to write his will. Son Harold would receive one-quarter.

When There is No Will

If someone dies leaving no will, **The Intestate Succession Act** applies. If the net value (after all creditors are paid) of the estate does not exceed $100,000.00 the spouse gets everything. If the net value exceeds $100,000.00 and there is one child, the spouse gets $100,000.00 plus interest at five percent from the date of death and one-half of everything over $100,000.00. The child gets the other half. If there is more than one child, the spouse gets $100,000.00 plus five percent interest from the date of death, and one-third of the balance. The children would receive the remaining two-thirds in equal shares.

If there is no widow, the children would share the estate equally. If any of the children predeceased their intestate parent, their spouse and/or children would get their share.

If no widow or children survive the deceased, his parents are entitled to his estate.

If no parents are living, the deceased's brothers and sisters share the estate in equal shares. If a brother or sister has died, that person's spouse and/or children would share that brother's or sister's portion equally.

Other next of kin are considered according to their blood relationship to the deceased.

If no next of kin survive the deceased, the estate will go to the government. The Lieutenant-Governor-in-Council can make a grant to anybody he thinks has a valid moral or legal claim to the estate.

Dependants' Relief Act

The law requires that you provide for your dependants in the best way you can. Therefore, whether or not you have a will you must provide adequate support for your dependants or they can apply to the Court to receive a reasonable portion of your estate. The application must be commenced within six months of the grant of probate or administration unless the Court extends the time.

A "dependant" includes the husband, wife and children of the deceased. A "child" under **The Dependants' Relief Act** includes illegitimate children if the deceased:

a) acknowledged publicly that he was the father of the child, or

b) lived with the mother of the child as her husband at the time of the child's birth and, after the birth, accepted the child as his own.

XIV. Matrimonial Law

In today's society, with marriage breakdown becoming a common occurrence, it is important that you understand the legal implications of separation and divorce.

Marriage Breakdown

If you have decided that you no longer wish to live with your spouse, you will have concerns about custody of children, support and property division.

i) Custody

In Saskatchewan, both parents have an equal right to custody of any child under 18. Both parents are also responsible for the support of the children. It is best for everyone concerned if the spouses can agree on which spouse is to have custody of the children. If the spouses cannot agree, a court application can be commenced and the court will then decide which spouse should have custody. The court will consider the physical, psychological, social and economic needs of the child and which spouse can best meet these needs. The Courts can also order that the parents have joint custody of the children.

ii) Support

In the event that spouses cease to live together and one spouse feels that he or she is entitled to maintenance from the other for either himself or herself and/or the children, an application can be brought under either The Divorce Act or The Family Maintenance Act. Common law spouses can also bring an application for maintenance, however, the only legislation which could be utilized by a common law spouse is The Family Maintenance Act.

In determining whether or not a spouse is entitled to spousal maintenance, the Court is to bear in mind whether there has been any economic advantage or disadvantage arising from the marriage or its breakdown, the fact that economic hardship arising from the breakdown of the marriage should be taken into account and, the spouses should be encouraged to seek economic self-sufficiency within a reasonable period of time. In determining the level of maintenance to be paid, the Court considers the spouse's needs, means and economic circumstances, as well as the age and physical and mental health of the parties, the length of the time the parties cohabited, the

legal obligation of either of the parties to maintain someone else, the measures available for the spouse claiming the maintenance to become financially independent and the length of time and costs involved to able the spouse to take such measures. In other words, it is expected that the spouse claiming the maintenance would take whatever training was available to enhance the spouse's job skills so that the spouse could obtain gainful employment as quickly as possible. With respect to children, in the event that a spouse has custody of the children and requires maintenance for the children, the Court would review the needs of the children and the means of the parents. As a general rule, maintenance is payable for children until age 18. The Court may extend the maintenance obligation past that age in the event that the child is unable to withdraw from the parent's charge or obtain the necessaries of life because of illness, disability or other reasons such as attendance at school. Every parent has an obligation to provide child maintenance to the extent that the parent is capable of so doing. In addition, courts can order that a natural parent's obligation outweighs a step-parent's obligation to maintain the child. The costs of the parent in exercising access to the child(ren) are also to be taken into account.

The spouses can also agree on the amount of maintenance and can put this into a contract referred to as an "Interspousal Contract".

Any maintenance payments (which includes mortgage payments) made by a spouse as a result of marriage breakdown are tax deductible, provided they are periodic (basically, more than one lump sum per year) and are made pursuant to the terms of a Court Order or written Interspousal Contract. The spouse who receives the payments must then declare them as income.

iii) Property Division

In Saskatchewan, **The Matrimonial Property Act (MPA)** has drastically altered the rules concerning the division of "matrimonial property" between legally married spouses. The Act assumes that marriage is a partnership and that property acquired by either or both spouses during the marriage should be shared equally unless it would be unfair to do so. An application for division of matrimonial property can be made whether or not the spouses have separated.

a) Matrimonial Home and Household Goods

Under the **MPA**, both spouses are deemed to have an equal right to possession of the matrimonial home and household goods. The "matrimonial home" is defined as:

1. a home or suite in which one or both spouses has an interest and is or has been occupied as a family home;

2. up to 160 acres surrounding the home;

3. mobile homes;

4. condominiums;

5. that part of business premises used as living accommodation.

The court can make an Order granting one spouse exclusive possession of the matrimonial home and household goods. Regarding the home, the Order can be registered at the Land Titles Office and then the property cannot be dealt with so as to affect the rights of the spouse granted exclusive possession. (For example, the property could not be sold or rented without the occupying spouse's consent).

The matrimonial home is always shared equally unless the court considers that to do so would be unfair and inequitable due to extraordinary circumstances or that it would be unfair and inequitable to the spouse who has custody of the children. However, in dividing the matrimonial home, the court cannot take into account the fact that one spouse acquired it before the marriage.

b) Matrimonial Property

If either spouse makes application for the distribution of matrimonial property (which includes all real and personal property, including shares in corporations owned by one or both spouses), the **MPA** provides that it shall be distributed equally between the spouses unless one or more of the following considerations apply:

1. there is a written agreement to the contrary;
2. the length of time the spouses have lived together would make a 50/50 split inequitable;
3. a third party has contributed substantially to the acquisition, operation or management of the matrimonial property (for example, a parent);
4. a tax liability (capital gains or recapture of capital cost allowance) will be incurred by a spouse as a result of the transfer or sale;
5. a spouse has existing debts or liabilities or has paid debts during the course of the marriage (although it should be noted that the **MPA** does not provide that liabilities or debts must be distributed equally between spouses);
6. a third party makes a gift directly to one of the spouses (that is, specified that the gift is for one spouse only);
7. the interest of third parties will be substantially affected (for example, other shareholders in a small corporation).

If either spouse brings property to the marriage, the fair market value of the property at the time of marriage is exempt from distribution. However, the appreciation on the property is subject to equal distribution. For example, suppose Jones owned farm land worth $100,000.00 at the date of the marriage which at the time of the property division was worth $150,000.00 the court would order that the appreciation of $50,000.00 be divided equally between the spouses unless an exception applied. As mentioned previously, this does not

apply to the matrimonial home which is presumed to be shared equally no matter when it was acquired.

Certain types of property are not included in the list of property which is presumed equally shareable. These are:

1. awards of damages made in favour of one spouse (for example, after an accident);
2. insurance proceeds that are not in respect of property (for example, a settlement for personal injury), and
3. property acquired after a decree nisi of divorce or judicial separation.

In deciding on the division of matrimonial property, the court cannot consider the immoral or improper conduct of either spouse unless it results in the financial standing of one or both spouses being detrimentally affected.

c) Rights Regarding Property Division After Death

The **MPA** provides that a spouse can commence an application for the division of matrimonial property up to six months after the grant of Letters Probate or Letters of Administration concerning the estate of his/her spouse. This means that the amount of the distributal property in an estate can be reduced by a court order under the **MPA**. You would be wise to consult your lawyer regarding how the **MPA** affects your will.

d) Interspousal Contracts

The **MPA** provides that spouses can enter into Interspousal Contracts concerning how their property is to be divided. This contract must be in writing and must be acknowledged before separate lawyers in a procedure set out under the **MPA**. It can be entered into prior to or during the marriage. Ownership, division and possession of property during marriage and upon its termination can be agreed to in the contract. All Separation Agreements should now be in the form of Interspousal Contracts.

A valid Interspousal Contract will remove all property it covers from the provisions of the **MPA**. In other words, a court cannot even consider that property when deciding on a division of the matrimonial property. Any other type of written agreement may be taken into consideration by the court, but the property it deals with would not be exempt under the scheme set out in the **MPA**.

e) Tax Implications of Property Division

One spouse can transfer assets to the other spouse and suffer no immediate tax consequences as a result of the transfer because **The Income Tax Act** treats this as a rollover. However, the spouses can elect to not have the rollover apply if joint elections are filed during

the year the parties divide their property pursuant to a written separation agreement or court order. If income is earned from the transferred property during a separation, **The Income Tax Act** provides that the income is not attributed back to the transferring spouse, but is taxable in the hands of the spouse to whom the property was transferred. This provision will not apply if the spouses resume cohabitation within 12 months of the date on which the agreement was entered into, or the Court Order was made.

Where a court orders division of a Registered Retirement Savings Plan between spouses on or after the breakdown of the marriage, the funds can be transferred tax-free. This provision will not apply if the spouses cease to live apart within 12 months from the date of the order.

Separation Agreements (in the form of Interspousal Contracts) should contain provision which ensure that the tax burden will be fairly distributed between the spouses. An accountant and lawyer should be consulted regarding how this can be accomplished.

Divorce

The federal government has the power to legislate concerning divorce. Under **The Divorce Act**, the grounds for divorce have been more broadly defined and a breakdown of a marriage can be established by:

a) adultery;
b) mental or physical cruelty; or
c) separation of the spouses for at least one year immediately prior to the commencement of the divorce proceedings.

The Act also provides for financial support for a spouse and children, custody, access, and interim support (interim support applies to the time between commencement of the divorce and the trial) for a spouse and children. In custody and access disputes the Court is directed to take into consideration the best interests of the child as determined by the means, needs and other circumstances of the child.

The Act also provides for a more simplified divorce process. The divorce action is commenced by a Petition. If the Petition is not disputed by the other spouse then an application for Judgment and Certificate of Divorce can be obtained without the necessity of a Court appearance by either spouse. A decree of divorce is then effective on the 31st day after the day on which the Judgment was rendered, or, in the event of an appeal against the decree, when the appeal process is exhausted. It is only after a Certificate of Divorce is granted that the parties are legally free to remarry.

Glossary

Acceptance Clause	The portion of an Offer to Purchase which is signed by the Vendor and indicates that he accepts the terms of the Offer to Purchase as they have been set out by the Purchaser. Once the Vendor signs the Acceptance Clause, the Offer to Purchase becomes a binding Agreement of Sale between the Vendor and Purchaser.
Administrative Law	A branch of the law which deals with the body or rules governing the exercise of authority by government appointed boards and agencies. Examples are The Egg Marketing Board and Labour Relations Board.
Agreement of Sale	A legal document between a vendor and a purchaser which sets forth the terms of sale of a property.
Builders' Lien	A claim which may be placed against the title to property by a builder, or the supplier of material or labour which improves a specific property if the owner fails to pay for the services.
Case Law	The body of written judicial decisions.
Caveat	A declaration of a legal interest in land by someone other than the registered owner. A caveat must be in writing, filed with the Land Titles Office and noted on the Certificate of Title.
Certificate of Divorce	The final court order which dissolves the marriage.
Civil Law	The branch of law which deals with private rights and obligations between private citizens.
Claimant	Someone who makes a claim or asserts a right or makes a demand. For example, a Plaintiff in a civil action is the person who initiates the action. The Defendant is the person against whom the action is brought and against whom the claim is made.
Collateral	Means property that is subject to a security interest in favour of a vendor or lender.
Common Law	The branch of law which is not written in statutes. The recognition by the courts of principles, customs and rules of conduct previously existing among the people.
Contract	An agreement enforceable by law. The essential elements of a contract are: (1) an offer and acceptance; (2) the capacity of the parties to contract; (3) consideration to support the contract (for example, money in exchange for goods); (4) the consent of the parties that the contract should be formed.
Criminal Law	The branch of law which governs the relations of the individual to the state. An act is criminal when it is prohibited under penal provisions enacted by the federal or provincial governments.

Defendant	A person who is sued or against whom a legal proceeding is commenced.
Easement	A right enjoyed by the owner of land over the land of another. (For example, a right of way.) An easement can also be created pursuant to a statute, namely The Public Utilities Easement Act, the National Energy Board Act (Canada); The Pipelines Act; The Water Corporation Act; The Watershed Association Act; The Power Corporation Act and The Saskatchewan Telecommunications Act.
Encumbrance	A charge or liability attached to property. (For example, a caveat).
Financing Statement	Means a document registered by a secured party (vendor or lender) giving notice of his security interest in an article or articles owned by the debtor.
Garnishee	To attach (place a claim to) debts, wages or money owing to a judgment debtor (someone who has been ordered to pay pursuant to a court order), so that this money can be used to pay the judgment creditor (the person whom the court has ordered be paid by the judgment debtor).
Interspousal Contracts	Contracts which, under **The Matrimonial Property Act**, can be entered into between those who are legally married or those who plan to be married. The contracts can determine how the matrimonial property will be divided in the event of separation or divorce. Certain legal formalities must be observed before the contracts are binding.
Judgment	The decision of a court after the trial of an action.
Offer to Purchase	A legally binding promise by one party to purchase property on certain terms if those terms are accepted by the owner.
Order	An Order is every decision of a Court other than a final Judgment. An Order is a decision upon a point which arises during the course of an action (such as allowing a Plaintiff to add another Defendant).
Outlawed Debts	A debt which cannot be enforced by the courts because the action has not been brought within the time provided in the Statute of Limitations.
Personal Property	Moveable property; goods or chattels. (For example, automobiles, machinery and jewellery.)
Plaintiff	Someone who sues or commenced a legal proceeding.
Purchase Money Security Interest	Means: (a) a security interest taken by a vendor (seller) in the article sold to secure payment of the sale price or, (b) a security taken by a lender in an article for which it has advanced some or all of the money used to purchase the article.

Queen's Bench Court	The highest court in Saskatchewan where all civil claims other than Small Claims actions must be commenced and where certain criminal cases must be heard (for example, murder and treason).
Real Property	Immoveable property. An interest in land.
Security Interest	Means an interest in personal property which secures payment under an "instalment plan" sale or a loan.
Small Claims Court	A civil court where an individual or corporation can bring an action for $3,000.00 or less.
Statute Law	The laws enacted by the federal government or provincial legislatures.
Subpoena	A command by a court ordering a person to appear in court for a specified purpose. If the person does not attend, he can be penalized (fined or imprisoned).
Transfer	The legal document which is registered at the Land Titles Office to change legal ownership of land.
Trespass	An unlawful act against the property of another (for example, wrongfully entering onto someone else's property).
Writ of Execution	A judicial command directed to the Sheriff which orders him to enforce a Court's Judgment by seizing real property (land) or personal property (for example, machinery).